Department of Resources Recycling and Recovery

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

FINAL STATEMENT OF REASONS

UPDATE TO INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR), released on August 22, 2025, is incorporated by reference herein. The ISOR contained a description of the rationale for the proposed regulations. On August 22, 2025, all Documents Relied Upon and identified in the ISOR were made available to the public. The updates to the proposed regulatory action that were made subsequent to the release of the ISOR and the reasons supporting those changes are set forth below.

UPDATED SPECIFIC PURPOSE AND NECESSITY OF THE AMENDED PROPOSED REGULATION

The following contains updated purpose and necessity statements for the submitted regulation text.

TITLE 14. Natural Resources

DIVISION 7. Department Of Resources Recycling and Recovery

CHAPTER 11.1. Plastic Pollution Prevention and Packaging Producer Responsibility Act

ARTICLE 1: Definitions

SECTION 18980.1. Definitions

Subsection (a)(8)(B)(iii)

The purpose of this subsection is to expressly limit the scope of section 42041(e)(1)(B)(ii) of the Public Resources Code (PRC) so that certain bags subject to a narrower, preexisting statute restricting their use are not considered “bags used in the packaging of food.” More specifically, bags that are “pre-checkout bags” or bags provided to customers at the point of sale by “stores,” as described in statutes applicable to those bags, are not the bags referred to in section 42041(e)(1)(B)(ii). (See, generally, Chapter 5.3 of Part 3 of Division 30 of the PRC (Chapter 5.3), added by Senate Bill 270 (Stats. 2014, Ch. 850), governing single-use carryout bags, including section 42281.2, added by Senate Bill 1046 (Stats. 2022, Ch. 991), governing “precheckout bags”.) This interpretation is necessary because the Act must be read in a way that harmonizes it with Chapter 5.3 of Part 3 of Division 30 of the PRC (Chapter 5.3), which contains its own definitions of “reusable” and “single use” that are inconsistent with the Act’s definitions and defines “recycled paper bag” inconsistently

with how the Act defines “recycle” and “recycling.” (Section 42280 of the PRC.) It also contains its own, narrow standards for pre-checkout bags, requiring them to either be compostable or a recycled paper bag. Furthermore, Chapter 5.3 requires reusable grocery bags to be certified as “reusable” and, for plastic bags, as “recyclable” by third-party certification entities. CalRecycle, in turn, is required to publish a list of reusable grocery bags that are properly certified and therefore not prohibited. Grocery stores and convenience stores throughout the state depend on that mandatory list for identifying bags that they are permitted to distribute. However, if such bags could be considered covered material under the Act, that list would be misleading and possibly superfluous because CalRecycle lawfully must certify bags under the standards of Chapter 5.3, not the Act, so a bag’s presence on the list would not necessarily mean that distribution of the bag is lawful. Moreover, section 42287 of the PRC expressly provides that Chapter 5.3 “occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags” distributed by “stores,” as those terms are used in Chapter 5.3. Given the inconsistency between the restrictions imposed by the Act and those imposed by Chapter 5.3, bags distributed by “stores” (e.g., grocery and convenience stores) in a manner subject to the latter must not be considered to be used in the packaging of food for purposes of section 42041(e)(1)(B)(ii) of the PRC.

Lastly, for purposes of harmonizing the Act and these regulations with Chapter 5.3, the exemption under the latter for small retail establishments does not apply. This is necessary because that exemption would result in bags used by smaller retail businesses being subject to the Act, even though the same bags used at large businesses would not be. That result would be inequitable and would mean this subsection would fail its essential purpose with respect to small businesses.

Subsection (a)(17)(F)

This subsection establishes the meaning of “distribution” and “distribute,” specifying that they refer generally to the act of transferring products in the supply chain or to end users of products. Such a transfer need not occur at the moment of sale but must constitute the transfer of ownership to the receiving party. Interpreting these terms is necessary because statute uses them repeatedly but does not define them. Given the manner in which the Act uses the term, it would be inappropriate to interpret it more narrowly to refer to particular types of sales or the delivery of products to those who sell them. The Act’s repeated use of the phrase “sold, offered for sale, or distributed” (or similar terms) indicates that the Legislature intended that phrase as a single reference to all relevant commercial actors, thereby ensuring that there will always be a person defined as the “producer” under section 42041(w) of the PRC. In other words, the phrase encompasses persons that provide products to others, regardless of whether there is an actual sale. Interpreting “distribute” otherwise would read into the Act an obvious loophole: If there is no person in the state that sold certain covered material items to a business in the state, that business could avoid being a producer simply by providing covered material items to others without receiving payment tied specifically to the items. This could result, for example, in there being no producer under section 42041(w)(3) for plastic food service ware items that a food service establishment

provides to patrons free of charge. Moreover, when a manufacturer that manufactures goods on behalf of an in-state brand owner, that brand owner may own the goods immediately once they are manufactured, before they are transported to any party. By requiring a “transfer” of the goods, not the mere “transport” of them, this subsection resolves the ambiguity that otherwise would result in that scenario.

This subsection also provides a definition of “import.” This is necessary because statute uses that term in multiple contexts but does not define it, and it is subject to multiple interpretations (e.g., as referring only to goods moved into the state from foreign countries, as opposed to including goods moved from other states). Broadly interpreting it to refer to all goods entering the state, regardless of origin, is necessary because a narrower interpretation could not reasonably have been intended. If “import” only referred to goods transferred from foreign countries, section 42050 of the PRC would not prohibit covered material from being moved into the state from other states and immediately disposed of, without being sold or offered for sale. That would contravene the express purposes of the Act set forth in section 42050 and the policy priorities referenced in section 42050.

Subsection (a)(17)(F)(i) and (ii)

These subsections clarify and limit the definition provided in subsection (F) for “distribution,” “distribute,” and “import.” As provided in (i), those terms necessarily cannot apply with respect to products that leave the state without ever being provided to consumers or disposed of. If such products could be considered distributed or imported in or into the state, the Act would regulate goods moved in interstate commerce in ways that the Legislature could not reasonably have intended. The express intent behind the Act, as explained in section 42040, and the policy priorities referenced in section 42050 make clear that the Act concerns materials that reach their end of life in the state, not materials that merely move through it. The effect of this subsection is to narrowly interpret the Act’s inclusion of the terms “import” and “imported” alongside “distribute” and “distribution”: Those terms ensure that the Act is understood to concern the sale, offer of sale, and distribution of goods, with no requirement that the goods originated within the state. The terms do not imply that the Act applies generally to goods that merely pass through the state or discriminates between goods based on whether they originated within the state.

Subsection (a)(17)(F)(ii) explains that transportation on behalf of another person must be considered conducted by that person. This is necessary because, otherwise, common carriers and other entities**,** such as logistics providers, that merely move products might be considered relevant to determining the producer of covered material. That result would be nonsensical because such transporters would rarely, if ever, have meaningful control over the covered material used by the products they transport and may not even know what those products are to begin with. Including this subsection provides added clarity for entities endeavoring to identify the producer of covered material.

ARTICLE 2: Covered Material and Covered Material Categories

SECTION 18980.2. Categorically Excluded Materials

Subsection (a)(2)

The purpose of this subsection is to address the statutory mandates concerning conflicts with requirements under federal laws and regulations, including regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture. This subsection does so by ensuring that, when it is not reasonably possible for food or agricultural commodity packaging to comply with both the Act and those requirements, the packaging will be considered not to be covered material, effectively exempting the packaging and the persons that would otherwise be producers of the packaging from all requirements of the Act. This is necessary because such conflict necessarily constitutes a direct conflict that PRC section 42060(b) requires the regulations to avoid. For completeness and context, this subsection also identifies certain examples, with respect to particular federal laws, of the types of direct conflict that might arise. To comport with how PRC section 42060(b)(2) uses the term "guidelines," the word "mandatory" in this subsection qualifies the phrase "regulations, rules, or guidelines." That word is a synonym of "required" and is used in that sense. While "regulations" and "rules" are necessarily "mandatory," a "guideline" might be understood to set forth standards that are merely voluntary. But that term must be limited to federal requirements for two reasons. First, when describing conflicts that the regulations must avoid, PRC section 42060(b)(2) only uses the word "guidelines" as an example of "laws or regulations." Second, a requirement under the Act cannot logically present a conflict with a provision in a "guideline" if the guideline does not set forth a requirement; if "guidelines" are merely suggestions, one cannot violate them. Accordingly, the word "mandatory" in this subsection qualifies the phrase "regulations, rules, or guidelines" to ensure that that logical relationship between the Act and federal requirements is clear.

Subsection (a)(2)(A)

The purpose of this subsection and the following subsection is to establish a procedure that entities must follow when they determine that packaging is not covered material for the reason set forth in paragraph (2). This subsection covers the very first step, explaining that a written notice must be submitted by email unless the Department has made an online submission portal available. This provision is necessary to establish clear, reasonable expectations regarding the procedure that entities must follow to avail themselves of the exclusion described in subsection (a)(2).

Subsection (a)(2)(B)

The purpose of this subsection is to explain what the notices described in subsection (a)(2)(A) must include and what they must show. The requirements are straightforward:

The notices must identify the legal basis for claiming a conflict exists, describe the packaging at issue, and explain the contention that packaging that avoids the conflict cannot be used. This is necessary to establish clear, reasonable expectations regarding the procedure that entities must follow to avail themselves of the exclusion described in subsection (a)(2). It is also necessary to clarify how the Department will assess whether to require resubmission of a notice before deeming it complete, as described in subsection (a)(2)(C), or submission of additional information to assess whether complete notices are sufficient, as described in subsection (a)(2)(E).

Subsections (a)(2)(B)(i) through (iii)

These provisions provide criteria that analytically clarify the phrase “not reasonably possible to use any alternative packaging or packaging components that would avoid the conflict.” The criteria are objective, fact-based conditions that the notice must consider and, applying straightforward logic, must be true for it to be not reasonably possible to use such an alternative. The effect of the criteria is to establish three separate bases on which packaging may be disqualified from the exclusion described in subsection (a)(2). Clause (i) establishes the most basic reason that packaging might not qualify for the exclusion: that there is an alternative that can lawfully be used (including with respect to requirements regarding safety and structural integrity). By specifically explaining that such an alternative must not create “new unavoidable legal conflict with any law,” this clause prevents the proposed regulation from disqualifying packaging based on alternatives that could not lawfully be used for reasons other than the federal requirements cited in the notice. Clause (ii) and (iii) encompass circumstances where the “alternative” packaging is not a discrete packaging alternative but rather an iteration of the packaging itself. Under clause (ii), packaging is disqualified if the conflict can be avoided by no longer using the packaging components that cause it. Under clause (iii), packaging is not excluded from the definition of “covered material” if it can be redesigned or replaced to avoid the conflict. Taken together, these three clauses provide the analytical framework for assessing whether the circumstances described in the notice satisfy the reasonableness standard described in subsections (a)(2) and (a)(2)(B). This is necessary to ensure predictable, uniform application of the exclusion.

Subsection (a)(2)(C)

The purpose of this subsection is to establish a procedure through which the Department will subject notices to initial scrutiny and the substantive standard governing that scrutiny. This is necessary to establish a clear, reasonable mechanism for CalRecycle to prevent bad faith or clearly erroneous notices from resulting in packaging being considered excluded from the definition of “covered material.” Without such a procedure a notice could claim that packaging is not “covered material” even if it is not packaging for food or agricultural goods or if there is no conceivable conflict with federal requirements. The scrutiny required under this paragraph considers only whether the notice contains the elements described in subsection (a)(2)(B) and whether CalRecycle is aware of packaging that would avoid the cited conflict with federal requirements but

that the notice did not address. In either case, the notice may be resubmitted to resolve such defects. This process ensures that entities submitting notices will conduct a good faith evaluation of packaging options available to them and explain why they cannot serve as the alternative described in subsection (a)(2)(B) (i.e., packaging that avoids the conflict with federal requirements). By requiring CalRecycle to notify entities within 90 days that a notice must be resubmitted, this regulation balances the certainty that businesses reasonably need while ensuring CalRecycle has adequate time to evaluate whether requiring resubmission is appropriate.

Subsection (a)(2)(D)

The purpose of this subsection is to establish a procedure through which the Department will give effect to the notices described in subsections (a)(2)(B) and (a)(2)(C). Unless a notice is deemed incomplete pursuant to subsection (a)(2)(C), the Department must add the notice and certain information from it to a publicly accessible database. The information in the notice must identify the packaging subject to the exclusion, the associated products, the date the notice was deemed complete, and the status of any review of the notice by the Department. These provisions result in adequate public notice without requiring disclosure of the entire notice, thereby ensuring that the Department can protect trade secret information. This subsection also explains that the exclusion will be deemed to apply to packaging identified in the database unless the Department determines that the notice and any additional supplementation does not justify the exclusion (see subsection (a)(2)(E).) These provisions are necessary for multiple reasons. First, regulated entities and the public reasonably require clarity concerning when the exclusion will be deemed to apply. Second, without a public database, entities that might be responsible for similar packaging might otherwise not be aware of compliance pathways available to them. Moreover, without such transparency, there would be no ready way for the public to determine whether certain packaging is excluded from regulation under the Act, and the continued use of single-use packaging might thwart consumers' expectations of the Act's effects. Third, by requiring the database to indicate whether a notice is under review or the results of a review, the proposed regulation ensures that the database distinguishes between notices that remain in effect, those that have been disqualified as described in subparagraph (E), and those that are in effect but are pending review pursuant to subparagraph (E). This provides the transparency necessary for the regulated community and the public to understand compliance status of particular packaging.

Subsection (a)(2)(E)

The purpose of this subsection is to establish a procedure, including the means of notifications from the Department, through which the Department will evaluate claims that complying with the Act presents a direct conflict which justifies an exclusion for purposes of the preceding provisions. Providing a procedure specific to such claims is necessary because the notice procedure described above presents circumstances dissimilar to other compliance- and enforcement-related scenarios. Here, entities must

make unilateral decisions concerning their obligations under the Act based on the need to comply with laws other than the Act, and those decisions become effective based on notice to the Department after the Department conducts an initial review to identify clearly inadequate notices. While the notice procedure accommodates the need for businesses to make decisions to address the food-related risks, such as spoilage and contamination, that packaging for food and agricultural goods may present, a process for avoiding unjustified exclusions is also necessary, and such a process must avoid unreasonably burdening businesses' ability to minimize those risks. Therefore, this subsection establishes a process on timelines that avoid unreasonable disruption of business, allowing 60 days for the entity to provide information to the Department and a 180-day grace period before negative determinations by the Department take effect. This process enables entities to have clear, uniform expectations for how the Department's compliance determinations will affect them and reasonable opportunity to plan accordingly.

This subsection also explains that, when the Department deems a notice and any additional information inadequate to sustain the exclusion, notice will be provided to the relevant entity via email and the database will be updated to reflect the change in status of the notice. These provisions are necessary to ensure that the database fulfills its purpose, as described in subsection (a)(2)(D).

Subsection (a)(2)(F)

The purpose of this subsection is to address the possibility of exploitation of the process outlined in the preceding provisions to achieve a perpetual, unjustified exclusion. This subsection provides that, once the Department determines that certain packaging does not qualify for the exclusion, any notices submitted concerning similar packaging will not automatically render the packaging excluded. Instead, such packaging will only be excluded if the Department makes an affirmative determination that the notice establishes that the packaging qualifies for the exclusion. This is necessary because, without such a limitation, notices deemed insufficient pursuant to (a)(2)(E) and notices similar to them could be repeatedly submitted, each time resulting in the exclusion applying until completion of the lengthy process for deeming the notice inadequate.

Subsection (a)(2)(G)

The purpose of this section is to make clear that the same protections for trade secrets applicable under other provisions of these regulations apply to the process outlined in (a)(2) and its constituent parts. This added clarity is necessary because that process is distinct from other processes set forth in the regulations (e.g., for exemptions) and might otherwise be perceived as not incorporating the general trade secret protections set forth elsewhere in the regulations.

SECTION 18980.2.5. Covered Material Category List Updates

Subsection (g): Updated and corrected purpose of this subsection

The purpose of this subsection is to clarify that, notwithstanding any other provisions, updates to the Covered Material Category (CMC) list that impose additional obligations on local jurisdictions or recycling service providers under section 42060.5(a) of the PRC will not go into effect for those entities under that section until one year after the CMC list effectively incorporates the change. This provision is responsive to public comment. Local jurisdictions and recycling service providers cannot instantaneously modify their programs and instead need a certain amount of time to adjust. Where there is no effective date later than the publication date, one year of adjustment is appropriate. A period of longer than one year would delay the positive results expected from the change and would often exceed the period local jurisdictions reasonably require for updating their recycling programs, while a shorter period might be impracticable for a local jurisdiction or recycling service provider. This subsection also explains that the publication date starts the one-year period, regardless of whether the published list states an effective date later than the publication date. This is necessary to preserve the intended effect of the regulation and the statute and to avoid ambiguity concerning the procedure to be followed.

ARTICLE 3. Evaluations for Covered Material Categories

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

Subsection (c)

The purpose of this subsection is to establish the second step in the process for identifying materials that might qualify for the exemption at issue. Requiring solicitation of public comments and evidence relevant to that identification is necessary for the implementation of section 42061(a)(3)(B) of the PRC because that section requires CalRecycle to make a complex determination for which it might otherwise lack sufficient information and evidence. Limiting the comment period to 30 days is necessary because it is a reasonable period for comment preparation and ensures that CalRecycle can make determinations pursuant to section 42061(a)(3)(B) without more delay than justified by the benefit of public involvement.

SECTION 18980.3.3. Eligibility to be Labeled Compostable

Subsection (b)(1): Updated and corrected purpose of this subsection

The purpose of this subsection is to identify section 42357(g)(1)(B) of the PRC as setting a categorical requirement to be applied to a covered material category as a whole. That requirement is that material must be an allowable input under the United States Department of Agriculture National Organic Program to be considered compostable for labeling purposes. In the context of the Act, this can be applied on a categorical basis by identifying covered material categories that contain any such materials. This is the only logical way to interpret section 42357(g)(1)(B) for purposes of the “eligible for being labeled ‘compostable’” requirement in section 42050(b).

ARTICLE 4: Responsible End Markets

SECTION 18980.4. Responsible End Market Criteria

Subsection (a)(4): Updated and corrected purpose of this subsection

The purpose of this subsection is to introduce the fourth set of criteria for evaluating whether an entity is a responsible end market. This subsection provides that, to be a responsible end market, an entity must achieve the applicable outcome established in subsection (a)(4)(A), (a)(4)(B), or (a)(4)(C). These outcomes, which include average recycling yields for recyclable covered material (subsection (a)(4)(A)), full biological decomposition of compostable covered material comprised of plastic (subsection (a)(4)(B)), and biological decomposition of compostable covered material comprised of fiber or paper or wholly derived from natural resources (subsection (a)(4)(C)), are necessary to ensure that responsible end markets conduct the recycling and recovery of materials and the disposal of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety, consistent with section 42041(ad) of the PRC. This subsection is necessary to ensure responsible end markets minimize the loss of covered materials and maximize the reintroduction of recovered materials into the supply chain, and to ensure materials are managed in a way that is consistent with the waste hierarchy established in section 40051 of the PRC, as required by the Act.

Subsection (a)(4)(B): Updated and corrected purpose of this subsection

The purpose of this subsection is to establish responsible end market requirements with respect to the generation of recycled organic products from covered materials comprising plastic. It provides that, to be a responsible end market for such covered materials, an end market must meet two primary requirements: The plastic covered material must fully biologically decompose, and the recycled organic product must meet standards necessary for sale in the marketplace.

The first requirement (full biological decomposition) is necessary because plastic substances, by themselves, cannot be “recycled organic product” (as defined in section 18980.1(a)(20)). Therefore, an end market cannot logically be said to produce recycled organic product in the first place if that product contains undecomposed plastic. Moreover, substances that otherwise would be recycled organic products but contain particles of undecomposed plastic would necessarily introduce plastic particles into the environment. Pursuant to the requirement of section 42041(aa)(5) of the PRC (requiring regulations to “encourage recycling that minimizes . . . environmental impacts . . . and public health impacts”) and the Legislature’s acknowledgment that plastic in the environment presents health and environmental impacts that must be mitigated (e.g., sections 42040(b) and 42064 of the PRC), facilities can only be responsible end markets (i.e., ones that conduct “recycling”) if their output product does not release such particles into the environment. Relatedly, considering an end market that produces plastic-containing compost to be a “responsible end market” would contravene the

definition of that term in section 42041(ad), which requires that responsible end markets recycle and recover materials "in a way that benefits the environment and minimizes risks to public health." It also authorizes regulations, such as this one, that "establish criteria regarding benefits to the environment."

This subsection includes an explanation of what "full biological decomposition" means. This is necessary because that phrase is technical in nature and might not otherwise be universally and consistently understood. The explanation establishes that the phrase refers to the processes and scientific principles commonly understood to underlie the conversion of materials into compost.

However, this subsection limits the biological decomposition requirement to materials intentionally included in the generation of recycled organic products. This is necessary because unintentionally included materials necessarily were not intended to biologically decompose in the first place. Because those cannot be processed by the facility, they fall within the definition of "incompatible materials" and logically must be treated as such (a requirement addressed in subsection (a)(3)). This requirement is necessary to ensure that end markets can only be considered "responsible end markets" if, as required by the definition of that term in section 42041(ad) of the PRC, its "disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health" and satisfies the established criteria "regarding benefits to the environment."

The second requirement (meeting the standards necessary for sale in the marketplace) ensures that composting is understood to be subject to the requirements for any process to be considered "recycling," as section 42041(aa)(1) of the PRC defines that term. In particular, recycling must generate material "that meet[s] the quality standards necessary to be used in the marketplace." The added clarity from expressly incorporating that part of the "recycling" definition is necessary because laypersons often understand "composting" to be distinct from "recycling," but the Act expressly considers "compost" to be the result of "recycling," as defined in 42041(aa)(1). Accordingly, for an end market producing compost to be considered a responsible end market (i.e., one that conducts "recycling"), its compost necessarily must be of such quality that it can be sold in the marketplace.

ARTICLE 6: Requirements for the Producer Responsibility Organization

SECTION 18980.6.1. Producer Responsibility Plan Submission

Subsection (a)

The purpose of this subsection is to specify the date by which an approved PRO must prepare and submit a plan to the advisory board unless it chooses to submit its plan according to the timeline described in subsection (b). This subsection provides that a PRO must submit such a plan to the advisory board by April 1, 2026, or the date that the proposed regulations are filed with the Secretary of State, whichever is later. This

subsection is necessary because, while section 42051.2 of the PRC describes the process and timeline for the various stages of review as part of the PRO's plan submittal, it does not specify the date by which the PRO must initiate this process by submitting its plan to the advisory board. A submittal date of April 1, 2026, or the filing date (if later) is different than the timeline described in subsection (b) because, under section 42051 of the PRC, producers must be participating in an approved plan by January 1, 2027. The earlier submittal date is necessary to allow sufficient time for the advisory board and CalRecycle to review, respond, and for the PRO to make necessary revisions to the plan to be approved by CalRecycle by January 1, 2027. A submission date of April 1, 2026, to the advisory board will allow 60 calendar days for the advisory board to review and comment, 120 calendar days for the PRO to revise its plan in response to the advisory board's comments, and 90 calendar days for CalRecycle to review and respond, consistent with the timeline set forth in section 42051.2 of the PRC. The conditional alternative date (the filing date of the proposed regulations) is necessary as a practical and legal matter because no requirements can be imposed until the regulations are finalized and effective. A date later than that alternative date, while it would serve the timing concerns otherwise addressed by this subsection, also would be inappropriate because it would risk delaying implementation to a degree that would unreasonably risk undermining statutory deadlines.

Subsection (b)

The purpose of this subsection is to establish an optional, alternate timeline to the one described in subsection (a) for the submission of its producer responsibility plan to the advisory board. This subsection allows an approved PRO to submit its producer responsibility plan to the advisory board after the date established in subsection (a) but on or before June 15, 2026, subject to the conditions described in subsections (b)(1) and (b)(2). This subsection is necessary to accommodate the possibility that an approved PRO may need additional time and opportunity following the registration and application of participant producers (pursuant to sections 18980.5(a) and (b) of these regulations) to receive, organize, and analyze relevant participant producer data and to incorporate such data into its proposed plan prior to submittal. This subsection accommodates such challenges by adding limited flexibility to the plan submission timeline.

Subsection (d)

The purpose of this subsection is to specify that a PRO must make its producer responsibility plan publicly available for comment on its website upon submitting the plan to the advisory board. Section 42051.2(a) of the PRC expressly contemplates an opportunity for public comment but does not specify how the public must be made aware of the contents of the plan. The Legislature could not have reasonably intended for there to be a public comment period without any obligation by the PRO to make the plan publicly available. That obligation must reasonably apply to the PRO, not the Department, because section 42051.2(a) expressly requires completion of the comment

process before the PRO submits the plan to the Department. Requiring the publication to be available via the PRO's website is necessary because it comports with the standard means for effective, efficient disclosures by any entity and ensures widespread access. Such publication ensures that the PRO consistently and reliably provides the public with reasonable opportunity to review the contents of any proposed plan. Also, section 42051.2(c) acknowledges that publication of plans on the PRO's website is the appropriate means to give notice to the public.

Consistent with the requirement that the PRO consider public comments, this subsection also establishes that the PRO's obligation under section 42051.2(b)(1), requiring consideration of comments submitted up to 60 days after the PRO publishes its plan, applies to all comments, not just those from the advisory board. Section 42051.2(a) is silent with respect to the period for public comments, creating an ambiguity that the proposed regulation must address. Interpreting the statute to require submission of public comments within the same period afforded to the advisory board is reasonable and was the Legislature's most likely intent. Section 42051.2(b)(1) unambiguously provides that the PRO's obligation to submit the plan to the Department depends on the time the advisory board takes to submit its comments, with the plan due within 120 days after those comments are submitted. This subsection ensures that the PRO cannot proceed within that timeline in a manner that subverts the Legislature's clear intent to permit meaningful opportunity for interested members of the public to submit comments, and requiring the PRO to permit a 60-day period for the advisory board to submit comments indicates that such a period is reasonable for comments generally.

Additionally, CalRecycle received feedback from interested parties during the informal rulemaking process in March 2023 and July 2023 concerning the PRO and producer responsibility plan requirements. Interested parties sought opportunities for public input regarding plans, including plan development, updates, and amendments. This provision is responsive to that feedback.

SECTION 18980.6.3. Review of Updated Producer Responsibility Plan

Subsection (b)

The purpose of this subsection is to establish the endpoint of the comment period for the PRO's proposed updated plan. This is necessary because the Act expressly establishes a timeline for the advisory board's consideration of an initial proposed plan (60 days, pursuant to sections 42051.2(a) and 42070(h) of the PRC) but does not explicitly address a timeframe for comments by the advisory board or the public for proposed plan updates.

This provision clarifies that the comment period set forth in sections 42051.2(a) and 42070(h) of the PRC applies to proposed updated plans just as it applies to initial proposed plans. Because the effect of an updated plan is identical to that of an initial plan—it generally governs the PRO's program and is effective for five-years—it is

reasonable to subject it to the same requirements for public transparency and input as applicable to initial plans.

Another purpose of this subsection is to specify that the PRO must make the proposed updated plan available for public comment by publishing it to its website when it submits the plan to the advisory board. This subsection also clarifies that the PRO must consider all comments (including those from the public, not just those from the advisory board) submitted to it within 60 days of such publication. These two requirements are the same as those established in section 18980.6.1(d) with respect to initial plans, as described above. The purpose and necessity of these requirements are the same as the purpose and necessity set forth above with respect to section 18980.6.1(d).

SECTION 18980.7. Independent Producer Plan Submission

Subsection (b)

The purpose and necessity of this subsection is the same as the purpose and necessity of section 18980.6.1(d), except with respect to initial submissions of Independent Producers' producer responsibility plans. When an Independent Producer opts to implement its own plan, such plan must meet the same requirements as do PRO plans, subject to section 18980.8(b) of these proposed regulations. Accordingly, the rationale explained above for section 18980.6.1(d), which concerns PRO plans, applies equally to Independent Producers.

SECTION 18980.7.2. Review of Updated Independent Producer Plan

Subsection (b)

The purpose and necessity of this subsection is the same as the purpose and necessity of section 18980.6.3(b), except with respect to Independent Producers' updated producer responsibility plans. When an Independent Producer opts to implement its own plan, such plan must meet the same requirements as do PRO plans, subject to section 18980.8(b) of these proposed regulations. Accordingly, the rationale explained above for section 18980.6.3(b), which concerns PRO plans, applies equally to Independent Producers.

ARTICLE 8: Producer Responsibility Plan Requirements

SECTION 18980.8.2. Closure and Transfer Plan Requirements

Subsection (b)(7)

The purpose of this subsection is to specify that the PRO must submit to CalRecycle a written electronic notice of intent to dissolve or terminate its plan no fewer than 180 days prior to the proposed dissolution or plan termination date, and introduce a list of information that must be included in the notice.

In order to ensure that the PRO is proposing dissolution or termination and to ensure that all parties clearly understand the proposed date, it is necessary for a PRO to notify

CalRecycle in writing to establish a record of the date of submission of the notice. If verbal notice were permitted, CalRecycle might misunderstand the nature of the request and initiate the process where no termination was requested or fail to initiate the process where a termination was requested. Specifying submission via email is necessary because it facilitates near instantaneous transmittal to CalRecycle, thereby supporting the PRO in meeting submission timelines, enabling effective document retention by CalRecycle, allowing for the appropriate CalRecycle personnel to easily access the submission for review, and minimizing the cost and time burden associated with mailing.

Additionally, the notice must be at least 180 days prior to the PRO dissolving or terminating to allow the PRO, CalRecycle, and the trustee or agent sufficient time to prepare for the execution of the Closure and Transfer Plan, and to ensure the PRO fulfills its outstanding obligations. Allowing a PRO to submit a notice more than 180 days before dissolving or terminating its plan ensures that a PRO is not forced to satisfy all outstanding obligations in an unrealistic timeline. Requiring the notice at least 180 days prior to PRO dissolution or plan termination provides all parties sufficient time to prepare for the Closure and Transfer Plan execution maximizing the likelihood of effective implementation. Without a provision explaining how the PRO will inform CalRecycle of its intended termination or dissolution, the effective date of the Closure and Transfer Plan would not be ascertainable. Moreover, this provision fulfills, in part, section 42051.1(f) of the PRC requirement to describe a process for notifying CalRecycle of the PRO's dissolution.

ARTICLE 10: Registration and Data Reporting Requirements

SECTION 18980.10. Registration and Maintaining Address on File

Subsection (a)

The purpose of this subsection is to establish and clarify the registration obligations of producers. This subsection provides that each producer, including those seeking an exemption under sections 18980.2.3, 18980.2.4, or 18980.5.2 of the regulations, must register electronically through the Department's online reporting system. This is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle, and to ensure that CalRecycle receives information necessary to implement and enforce the Act. To effectively oversee, implement, and enforce the Act, CalRecycle must have complete and accurate information on file for all producers that are subject to the Act, including those that request an exemption. Furthermore, electronic registration via a single, uniform system is necessary for CalRecycle to efficiently receive, maintain, and organize the registration submission.

Another purpose of this subsection is to specify the registration obligation of retailers and wholesalers. This subsection provides that retailers and wholesalers are not subject to this requirement if they are not the producer pursuant to section 42041(w) of the PRC

of any covered material used by goods they sell, offer to sell, or distribute. While section 42060(a)(2) of the PRC requires CalRecycle to establish a mandatory process for retailers and wholesalers to register with the Department, the relevant statutory provisions only govern the conduct of retailers and wholesalers that are producers of covered material used by goods they sell, offer for sale, or distribute. CalRecycle does not have any use or need for registration information pertaining to retailers or wholesalers that are not producers under the Act. This subsection is therefore necessary to interpret an ambiguous statutory provision and to avoid the unnecessary expense and burden of requiring all retailers and wholesalers in the state to register with CalRecycle.

SECTION 18980.10.1. Data Reporting Submission

Subsections (c) and (c)(1) through (c)(3)

The purpose of these subsections is to establish the required process, timeline, and contents for the submission of reports under section 42052(a) of the PRC. The subsections provide that data reports must be submitted electronically using CalRecycle's online reporting system and are due annually on July 1, except for the PRO's initial report, which must be submitted with its producer responsibility plan as required under 18980.6.1(a) or (b). The subsections further provide that a report's data must pertain to the previous calendar year and must use the CMC list that was current as of January 1 of the previous calendar year.

These subsections are necessary to establish a clear and uniform process that all reporting entities will be able to understand and follow. An electronic application process is necessary for CalRecycle to efficiently receive, evaluate, organize, and maintain the reported data, ensuring it receives reports in a manner that will best enable it to implement and enforce the Act. Requiring reporting via a single, uniform system is necessary for CalRecycle to efficiently receive, maintain, and utilize the information submitted to it. July 1 was chosen as the due date in response to public comments submitted to CalRecycle during the rulemaking process because it provides reporting entities with sufficient time to compile data from the previous calendar year and to prepare a report in compliance with this section, while still ensuring that CalRecycle will receive the data reports regarding the previous calendar year without unreasonable delay. It is necessary to specify that reports shall use data pertaining to the previous calendar year because that is the most recent, complete, and accurate data that will be available. Finally, it is necessary to rely on the CMC list that was current as of January 1 of the previous calendar year because the reporting entity is required to report data for the entire year, and the list that was current as of January 1 is the list on which a reporting entity will have based its decisions at the outset of the calendar year.

However, because the PRO must submit its plan either by April 1, 2026, pursuant to 18980.6.1(a) or by some later date (but no later than June 15, 2026) pursuant to 18980.6.1(b), this subsection ties the due date for the PRO's initial report to the date of

the plan submission. This is necessary to ensure that the initial plan is accompanied by the critical information identified in section 42051.3(a) of the PRC. That information logically must relate to the plan itself, so it is reasonable and logical to require that the initial report be submitted with the plan.

The purpose of this section is to address how reporting entities submit data reports to the Department. The revisions prescribe that reports be submitted to the Department through its online reporting system. Requiring reporting via a single, uniform system is necessary for CalRecycle to efficiently receive, maintain, and utilize the information submitted to it.

VARIOUS PROVISIONS: 18980.2.3(b) and (g)(1); 18980.2.4(c) and (h)(1); 18980.2.5(f)(2); 18980.2.6(b); 18980.5.1(a); 18980.5.2(a); 18980.6.6(a)(1); 18980.7.5(a)(1); 18980.9(a); 18980.11.1(c) and (h)(2)(C); 18981(c)

For each of the provisions identified above, the purpose and necessity are the same as stated in the Initial Statement of Reasons, except the identified provisions also explain that documents or information must be submitted to the Department by email unless there is an online submission portal available. This limitation is necessary to set reasonable expectations regarding how interested parties must communicate with the Department and ensure the Department can efficiently, reliably receive and review submissions.

NONSUBSTANTIAL CHANGES MADE TO THE REGULATION TEXT

CalRecycle made nonsubstantial changes to the regulation text for spelling, grammar, formatting, punctuation, cross-citations, and dates.

LOCAL MANDATE DETERMINATION

CalRecycle has made the following determinations:

Mandate Imposed on Local Agencies: Yes

Costs to any local agency which requires reimbursement in accordance with Part 7 of Division 4 of Title 2 of the Government Code: None

The statute mandates that local jurisdictions and recycling service providers (local agencies) include certain materials in their collection and recycling programs. Fulfilling that mandate involves collaboration with the producer responsibility organization (PRO) and certain producers to undertake various activities, such as education and outreach, material collection and processing, infrastructure improvement, and related investments. Local agencies' costs for fulfilling their mandate are influenced by local circumstances, including population density and market proximity. While certain costs may be initially borne by local agencies, they are not reimbursable by the State because, under the Act and the proposed regulations, the PRO and certain producers must pay local agencies to cover the expenses they incur to meet their statutory obligations.

Mandate Imposed on School Districts: None

REASONABLE ALTERNATIVES TO THE REGULATIONS AND CALRECYCLE'S REASON FOR REJECTING THOSE ALTERNATIVES

CalRecycle has evaluated two alternative scenarios: a lower cost scenario that results in fewer benefits than the proposed regulations, and a higher cost scenario that results in similar benefits to the proposed regulations. Set forth below are the reasonable alternatives considered and the reasons the alternatives were rejected. For a more detailed discussion of the alternatives, refer to the Alternatives section of the SRIA.

ALTERNATIVE 1

Alternative: Less stringent classification of plastic covered materials. Covered materials that are made of paper and plastic would be allowed to contain up to 20 percent plastic while still being classified as a paper covered material, thus not subjecting them to the source reduction and recycling rate requirements. Alternative 1 would result in direct costs of $20.5 billion, approximately $516 million lower than the proposed regulations.

Alternative 1 would result in 1,138 tons fewer material being categorized as plastic covered material and 62,000 fewer metric tons of CO2 equivalent greenhouse gas reductions than the proposed regulations would.

Some businesses that are not producers will be impacted by the Act through an increase in the cost of goods and materials. Alternative 1 would lessen the average annual cost for businesses that are not producers from $4,806 to $4,688. Regardless, implementation costs associated with the Act are expected to be absorbed by large producers of covered material, with a projected pass-through of costs to other businesses not classified as large or small producers of covered material.

Reason for Rejecting: Alternative 1 was rejected because it would not reduce the amount of covered material with small amounts of plastic, which contribute to the environmental and human health impacts that the Act was intended to address.

ALTERNATIVE 2

Alternative: Higher frequency of required producer reporting. Producers would be required to report their activities to the PRO quarterly as opposed to the annual reporting requirement per the proposed regulations. Alternative 2 would result in direct costs of $21.2 billion, approximately $218 million more than the proposed regulations.

Alternative 2 would not result in increased benefits over the proposed regulations, as the only change to direct cost would be for producer reporting rather than infrastructure or meeting the program requirements.

Reason for Rejecting: Alternative 2 was rejected because it is more costly and would not result in an increase in benefits compared to the proposed regulations.

CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the ISOR, NOPA (including the statement of benefits prepared pursuant to Government Code section 11346.5(a)(3)(C)), SRIA, in CalRecycle's summary and response to public comments, and in this FSOR, CalRecycle has determined that no alternative considered by CalRecycle would be more effective in carrying out the purpose for which the regulatory action was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action taken by CalRecycle.

STATEMENT REGARDING SMALL BUSINESS ALTERNATIVES

CalRecycle has determined that the proposed regulations will affect small businesses. CalRecycle has estimated that 58% of businesses impacted by the proposed regulations are considered small businesses. Small businesses that meet the definition of producer pursuant to section 42041(w) of the PRC, may be considered small producers, wholesalers, or retailers by the Act if in the most recent calendar year they had gross sales of less than one million dollars ($1,000,000) in the state. The Act authorizes CalRecycle to develop a process to exempt these entities from most requirements of the Act. Producers of covered material granted an exemption will be considered "small producers," will be exempt from the requirements of the Act other than the restrictions in section 42050(b) of the PRC, and will incur an annual cost of approximately $155 for record keeping and preparation of exemption applications.[1] Small businesses that meet the definition of producer per section 42041(w) of the PRC but are denied an exemption based on a determination by CalRecycle will need to join an approved PRO or satisfy their legal obligations independently.

CalRecycle expects small businesses to benefit from increased revenue from the sale of products made from recycled material. Additionally, less effort will be needed to review recyclability claims of packaging, and there will be an increased ease of providing product packaging to fit consumer demand. There will also be a reduction in the cost of disposal services as more recyclable material is generated. However, the reduction in disposal costs may shift to recycling services as materials shift to recycling and composting collection streams.

[1] The updated forecasts incorporated into the Direct Impacts Model (see response to DOF Comment #3) do not change this number.

No alternatives were considered by CalRecycle nor otherwise identified and brought to CalRecycle's attention that would lessen any adverse economic impact on small business, pursuant to Government Code section 11346.9(a)(5).

INCORPORATION BY REFERENCE

The Notice of Proposed Action listed the below documents as incorporated by reference, and they remain incorporated by reference.

- ISO/IEC 17025:2017(E), "General requirements for the competence of testing and calibration laboratories," International Organization for Standardization/ International Electrotechnical Commission, November 2017
- ISO/IEC 17065:2012(E), "Conformity assessment—Requirements for bodies certifying products, processes and services," International Organization for standardization/International Electrotechnical Commission, September 2012.
- State Administrative Manual, section 9213.1, Allocation of Costs—Indirect Cost Rate Determination Methodology, California Department of General Services (as published on 01/2022).
- ISO 59014: 2024(en), "Environmental management and circular economy — Sustainability and traceability of the recovery of secondary materials — Principles, requirements and guidance," International Organization for Standardization, October 2024.

The publication of these incorporated documents in full in the California Code of Regulations would be cumbersome, unduly expensive, or otherwise impractical because they are available online or for purchase, as specified in the Notice of Proposed Action, dated August 22, 2025, and in print would be approximately 112 pages of text in total.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY AND 15-DAY COMMENT PERIODS

Summary of Comments Received

Written comments were received by CalRecycle during the 45-day comment period which began on August 22, 2025, and ended on October 7, 2025, 2025. Written and oral comments were additionally received at a public hearing on October 7, 2025. Written comments were also received by CalRecycle during a subsequent 15-day comment period, which began on January 29, 2026, and ended on February 13, 2026.

The comments received during the 45-day comment period and public hearing are displayed on the attached SB 54 Rulemaking 45-day Comment Matrix, which shows the corresponding comment code, the commenter's name, and CalRecycle's response to the comment. Please refer to the SB 54 Rulemaking Comment Matrix for the list of 1,224 total comments received during the 45-day comment period and public hearing. The SB 54 Rulemaking 45-Day Comment Matrix is included in the final rulemaking file and is incorporated by reference.

Please note that comment submission codes I-55, I-56, and I-57 were deleted from the SB 54 Rulemaking Comment Matrix as those comments were submitted to CalRecycle's comment portal to verify technical functionality, and thus were not comments on the proposed regulations. Additionally, comment submission code O-69 was withdrawn by the submitter. With the exception of these removed comment submission codes, all of the codes designating comments in the SB 54 Rulemaking Comment Matrix are in sequential order, and all comments on the proposed regulations have been considered and responded to by CalRecycle.

The comments received during the 15-day comment period are displayed on the attached SB 54 Rulemaking 15-day Comment Matrix, which shows the corresponding comment code, the commenter's name, and CalRecycle's response to the comment. Please refer to the SB 54 Rulemaking 15-Day Comment Matrix for the list of 382 total comments received during the 15-day comment period. The SB 54 Rulemaking 15-Day Comment Matrix is included in the final rulemaking file and is incorporated by reference.

Because comments are designated using sequential codes for comments submitted within each comment period, certain codes for comments submitted during one period are reused for comments submitted during other periods. Unless otherwise indicated, when a comment response cross-references other comments, the cross reference is to comments submitted during the same comment period as the comment being responded to.

CalRecycle's Response to Comments Received

CalRecycle would like to express its appreciation to the numerous organizations, agencies, and individuals that participated in the 45-day comment period and public hearing, as well as the subsequent 15-day comment period. Following the 15-day comment period, CalRecycle concluded that no additional substantial amendments to the regulatory language were necessary in response to comments received. All comments are responded to in both the SB 54 45-Day Rulemaking Comment Matrix and the SB 54 15-Day Rulemaking Comment Matrix.

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations: 45-Day Comment Matrix

To enhance efficiency, CalRecycle, in collaboration with the Office of Data and Innovation, utilized a model to organize public comments submitted in the SB 54 rulemaking. This approach enabled staff to process and aggregate twelve hundred unique comments, ensuring that stakeholder input was addressed by staff thoroughly and in a timely manner. All public comments were reviewed by CalRecycle staff and all responses to public comments were developed by CalRecycle staff.

I-1: Anonymous

Comment I-1-1

Hi, this law is very important. Do not let others decide that your health can affected for a dollar $. Recycling and composting, removing waste from landfills and the ground is the most important issue CA faces today.

> **Response to I-1-1**
>
> Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

I-2: Manvir Singh

Comment I-2-1

I’m writing as the owner of a small gas station and convenience store here in northern California to share my concerns about SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

While I understand and support the goal of reducing waste and improving our environment and saving it for the future generations, the way this law is structured will put an extra burden on small businesses like mine. We already operate on thin margins, and this adds more compliance costs, reporting requirements, and packaging changes that we simply don’t have the same resources to absorb as large corporations do.

On top of the financial stress, we’ll be the ones directly dealing with customer confusion and frustration as packaging changes roll out. For example, if familiar cups, lids, or containers disappear or change in quality, customers are going to have questions and complaints—and our staff will be the ones caught in the middle. That can hurt sales, slow down service, and create a stressful environment for employees.

My concern is that the law, as it stands, will disproportionately affect small businesses and their workers while larger companies can more easily shift costs or hire staff to handle compliance. I believe there needs to be more consideration for how SB 54 is implemented so that its environmental goals are met without putting local businesses like mine at risk.

I appreciate your time in reading this and hope you'll take into account the very real challenges this creates for small business owners, our employees, and the communities we serve.

Thank You
Manvir Singh

Response to I-2-1

Comment rejected. This comment raises objections to the statute itself, not to any particular portion of the regulations, which cannot lawfully change how the statute is "structured" or eliminate its compliance costs, producers' reporting requirements, or statutory packaging restrictions. Although the comment also refers to "how SB 54 is implemented," it does so only in the general sense, without identifying any particular elements of the regulations or how they might be changed to address the commenter's concerns.

I-3: Jonathan Levy

Comment I-3-1

Dear Ms. Richmond,

PakTech would like to thank CalRecycle for giving us an opportunity to share our thoughts related to the *SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations August 2025 Draft (Draft Regulations)*. We congratulate CalRecycle for its work developing these regulations and the countless hours of stakeholder input and feedback it solicited that led to the release of the Draft Regulations. With that in mind, we hope our comments are received in the spirit they were written as we are interested in seeking clarity with some sections while also helping to improve the final draft.

Paktech is a manufacturer of HDPE plastic handles that utilize recycled resin as a feedstock. With facilities located in Eugene, Oregon, PakTech's products are made from post-consumer recycled HDPE resin ("rHDPE") sourced from curbside collection programs. Using rHDPE feedstock is part of our commitment to sustainability and ensuring this material remains in the circular economy. You may be familiar with PakTech's carrier handles as they can be found in
"big box" stores located throughout the state and anywhere beer and wine may be sold. As mentioned earlier, PakTech's handles utilize rHDPE as its feedstock and to date (January to August 2025) we have provided the demand to ensure that over 5.8 million milk jugs have been recycled and turned into recycled resin for our products shipped to California by our customers. In terms of weight, that is 777,000 lbs. of recycled resin. Nationwide, during the same time frame, we have ensured that over 65 million milk jugs have been recycled, which is the equivalent of over 8 million lbs. of recycled HDPE resin being consumed. While our company may be small in size, our consumer footprint is considerable. As such, we are experts when it comes to discussing issues related to

recycling programs, the cycles of supply and demand, and having a broad view of how the plastic recycling industry works. The demand we (and other manufacturers) create for rHDPE is the engine that drives the entire plastic recycling industry.

As is the case with many stakeholders, this is not the first time we have shared our opinion on the impact these regulations will have not only on our business, but on our customers and the recycling industry as well. Unfortunately, from our point of view we do not see anything materially different from the regulations that were released in May of 2025, or those that were released in 2024, and our objections to certain provisions still remain the same. We believe that without significant revision, these regulations specifically, as well as the underlying statute generally will materially harm plastic recycling. We believe that without such revisions, the key goal to reduce plastic litter and increase plastic recycling will not be achieved. With that in mind, we once again submit our comments on several aspects of these regulations
and hope CalRecycle consider our suggestions.

Response to I-3-1

Comment Rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment I-3-2

DISCUSSION:

1. Definitions

1.1. Definition of “Component”

Through several rounds of comment periods we have remained steadfast in our contention that the Draft Regulations do not go far enough in ensuring that manufacturers of component parts are not identified as producers. **We submit again for your consideration our suggested language for amending the definition of “component”** that declares manufacturers of component parts are not considered Producers (included in *underlined italic* text)

“Component,” with respect to covered material, means a covered material item that has no physically distinct subparts, or a piece or subpart of a covered material item, if the piece or subpart is distinct with respect to its composition or function or is otherwise physically distinct from other pieces or subparts. “Item” is defined in paragraph (12). Manufacturers of “component” parts are not considered producers and responsibility for such items are the responsibility of the producer of the packaging in which the component part is affixed.

Component parts are by their nature a business-to-business item and only serve their purpose once affixed to a primary package. Due to the transactional nature between the Brand Owner and component manufacturer, the Brand Owner should have the ability to

report on the number and types of components it purchases. It is this transactional nature that clearly assigns responsibility to the Brand Owner and in these cases should be considered the producer for these items. From a reporting perspective, CalRecycle or the Producer Responsibility Organization (“PRO”) can go to the Brand Owner for this information. This reporting information can then be used to ensure the producer of the primary package and the components to which it was affixed are dealt with accordingly.

As stated earlier, manufacturers of components are typically engaged in business-to-business transactions and provide those items based on the direction from the primary packaging manufacturer. Once a component is affixed to the primary package, the component manufacturer has no control over how the component will be used and as such, responsibility should rest with the primary packaging manufacturer or brand owner.

It is our continued contention that once the extended producer responsibility law goes into full effect, the status of who is and who is not a producer will be hotly debated. We believe that CalRecycle can alleviate much debate by accepting our suggestion and amending the definition of component.

Response to I-3-2

Comment rejected. The proposed definition of "Component" is unnecessary because it would not change the effect of the regulations. Materials are only "packaging" when they are used with a good, and any material that is not "packaging" (or food service ware) is not covered material and has no producer. Moreover, which person manufactured packaging is irrelevant to identifying the packaging's producer: PRC section 42041(w)(1) concerns the manufacturer of the good that is packaged, not the manufacturer of packaging itself. For the same reasons, the commenter's concern over the definition of "item" is unfounded and does not merit any revision.

Comment I-3-3

1.2. Definition of “Item”

As we read the latest draft, the definition of “Item” constitutes the entire physical package – this includes all components, labels and other “things” affixed to the primary package. The addition of this definition further supports our contention that once a component is affixed to the primary package, it loses its distinctiveness and becomes part of the primary package. **As such, the producer of the primary package should bear responsibility for all of the components affixed to that package**. We ask that CalRecycle accept our suggestion above and amend the definition of “component” to clearly identify the primary packaging manufacturer or Brand Owner as the producer of all components affixed to a primary package.

Response to I-3-3

Comment rejected. In this comment, the commenter points to the definition of "item" as additional support for the request the commenter made in comment I-3-2 concerning the definition of "component." However, the definition of "item" does not support that request. Section 18980.1(a)(12) clearly explains how the proposed regulation uses the term "item." That term is used where the regulations concern physical embodiments of covered material, packaging, or food service ware. In other words, the term signals that the text is not referring to things in the abstract or referring to an amount of a material. Section 18980.1(a)(12) further explains that "item" encompasses all components that constitute a group of detachable components. In other words, it enables more concise phrasing than "a group of detachable components." Nothing in the definition suggests, as the commenter claims, that the term always encompasses "all components, labels, and other 'things' affixed to the primary package." CalRecycle therefore maintains its rejection of the commenter's suggested change for the reasons stated in response to comment I-3-2.

Comment I-3-4

2. Exclusion of Certain Types of Packaging
2.1.Disparity Between Material Types When Considering the de-minimis Exemption

In reviewing the Initial Statement of Reasons, the explanation for determining that “Independent Plastic Components” are ineligible for the *de minimis* exemption is given:

The purpose of this subsection is to incorporate the statutory limitation on when components can be considered to have de minimis weight or volume: They cannot be independent plastic components, as defined in subsection (b)(1)(B). This is necessary to give full effect to statute.1

Although the statute has a goal to reduce plastic pollution, another stated goal of the statute is to encourage plastic recycling. Recycling is a commodity driven business that relies on demand from producers that use post-consumer resins in their products. As mentioned earlier, PakTech’s handles utilize rHDPE as its feedstock and to date (January to August 2025) we have provided the demand to ensure that over 5.8 million milk jugs have been recycled and turned into recycled resin for our products shipped to California by our customers. In terms of weight, that is 777,000 lbs. of recycled resin. This demand driver fuels the entire recycling supply chain and without it, no matter how much money the PRO invests in infrastructure, or CalRecycle regulates, recycling won’t work. This definition harms plastic recycling and the entire recycling infrastructure because it depresses the demand manufacturers will have for using recycled plastic. Because **section 42041(s)(4) gives the Department the latitude to develop this definition as they determine, we suggest the Department take this opportunity to increase the use of post-consumer recycled content and encourage better design of such components.** By creating a definition which allows plastic components that incorporate post-consumer resins to be eligible for the *de minimis* exemption while

excluding those components made wholly from virgin resins, CalRecycle would be providing an incentive to manufacturers to consume more PCR and meet its goal of reducing the amount of virgin plastic being used. This is a prime opportunity for CalRecycle to use its authority in a constructive manner and rely on the expertise of those in the recycling industry that are driving plastic recycling forward. Therefore, we suggest the Department redefine “Independent Plastic Component” as follows (in *italic underlined* text):

“Independent Plastic Component” is a packaging component, or a group of components that wholly or partially comprises plastic and is not made from post-consumer recycled plastic and has characteristics that may prevent recyclability.

In addition to depressing demand for post-consumer resins, the current definition is patently unfair and provides benefits for applications made from materials other than plastic. An independent life cycle assessment2 has shown fiber-based packaging handles contribute more greenhouse gas emissions and have a larger carbon footprint when compared to our mono-material, fully recoverable and recyclable package handles. However as currently drafted, the regulations allow fiber-based detachable components to qualify for the de-minimis exemption, while similarly designed plastic components are excluded. We believe this creates a material disparity and may cause manufacturers to switch to less sustainable designs simply because it is not made from plastic.

We find this ironic because while this material disparity exists, CalRecycle will actually be encouraging the use of products that will greatly contribute to climate change. We don’t believe the Legislature intended to increase greenhouse gas emissions and make climate change worse when they drafted the law. Unfortunately, CalRecycle will be going against the Legislature’s intentions if it keeps the current definition in place by encouraging a far worse and much less sustainable packaging choice.

Response to I-3-4

Comment Rejected. Regarding the suggested definition of "Independent Plastic Component," that definition has no legal support. The phrase "as the determined by the department" in 42041(s)(4)(A) establishes CalRecycle's authority to decide whether elements are "independent plastic components," not the authority to define that phrase without regard to its plain meaning or the context in which it appears. The commenter's suggested definition gives no effect to the word "independent." Instead, it recapitulates the concept of material being "plastic" and adds criteria for post-consumer content and preventing recyclability. There is no legal basis for the post-consumer content criterion, and effects on recyclability are more appropriately addressed in the other requirements stated in paragraph (2) (see subparagraphs (B) through (D)).

Comment I-3-5

Conclusion

We thank CalRecycle for the opportunity to provide our feedback on the Draft Regulations and look forward to working with all stakeholders in this process to develop rules for the Plastic Pollution and Packaging Producer Responsibility Act that will ensure that the program works as the Legislature intended and consumer packaging is handled in the most responsible manner possible.

Response to I-3-5

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately (comments I-3-1 through I-3-5).

I-4: Kayla Cain

Comment I-4-1

Hello. I would like to know if there will be any attempts made to secure funding to assist in single-use replacements for operators of the National School Lunch Program. So far, compostable products have doubled my work's cost for consumables. Also, some of the compostable items are only able to compost on a large scale. Maybe there can be funding for reginal composting stations?

Response to I-4-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. Moreover, while a producer responsibility organization's plan might provide for investments in composting operations, funding directly by CalRecycle is outside the scope of the statute.

I-5: Lisa Hart

Comment I-5-1

The weakening of SB 54 is unconscionable and not what was intended.

Response to I-5-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. The comment provides no explanation of what "[t]he weakening of SB 54" refers to.

I-6: Juliet Burton

Comment I-6-1

Dear CalRecycle,
Please implement SB 54 as written. Plastic waste is overwhelming our communities, environment and health. Revising SB 54 increases the risks for chemical recycling or incineration – these are not solutions as this would only worsen these harms. California should lead by example and stand up for proper recycling solutions. Keep SB 54 as written to reduce harm and make the package producers accountable for the cost of recycling.
Best regards, Juliet Burton

Response to I-6-1

Comment rejected. The commenter requests that CalRecycle "[k]eep SB 54 as written." However, the regulations do not alter SB 54; rather, they interpret and implement the statute as written. In particular, the statute does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. Regarding "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion. Lastly, section 18980.8(g) implements the statutory provisions intended to ensure producers are "accountable for the cost of recycling."

I-7: Pegah Rashti

Comment I-7-1

Plastic waste is everywhere -- our parks, beaches and neighborhoods. We deserve real solutions that protect our communities, not false fixes like incineration. KEEP THE LAW AS IT IS.

Response to I-7-1

Comment rejected. CalRecycle appreciates the commenter's support for the proposed regulations. Nevertheless, the comment must be rejected and no response is required because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. If the commenter did not intend to express support for the proposed regulations but instead meant "KEEP THE LAW AS IT IS" as a request that the proposed regulations be changed so that they do not change the statute, CalRecycle rejects that suggestion because the regulations are mandatory and do not change the statute, which expressly prohibits incineration from being considered recycling; they interpret and implement it.

I-8: Xiao Fei Mao

Comment I-8-1

Burning or chemically breaking down plastics is not a solution! we need to come up with a better solution than this because it is only aggravating our current situation not helping.

Response to I-8-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. Moreover, the statute does not expressly forbid "chemically breaking down plastics," so the regulations cannot lawfully do so, either. Statute does exclude "incineration" (i.e., "burning") from the definition of "Recycling" (see section 42041(aa)(2)(B)), and nothing in the proposed regulations contradict that exclusion.

I-9: Julia Trainor

Comment I-9-1

We need to pass SB-54 as it was written! Plastic and packaging companies need to reduce single-use plastic packaging by 25% and move toward compostable or catchable packaging ! Newsom, you are a leader in so many ways, but look weak in this. Be strong and help make a better place to live now and for our kids future!

Response to I-9-1

Comment rejected. The commenter's recommendation is that the regulations "pass SB-54 as it was written," with no specific recommendation concerning the regulatory text. The Legislature, not CalRecycle, has already "passed" SB-54, and the regulations clarify, interpret, and implement the legislation as written.

I-10: Margaret Cherene

Comment I-10-1

I am outraged at the amount of plastic waste that I find every day on the streets of Los Angeles as well as on the beaches and in our parks! I routinely volunteer for cleaning up our beaches and I always wash out and reuse bags. There is no excuse for allowing the plastics industry to continue to flood our society with more plastics and then take no responsibility for recycling it. Please enforce the provisions of SB 54.

Response to I-10-1

Comment rejected. No substantive response is necessary because the commenter provides no identifiable suggestions as to how the regulations could better address the commenter's concern over plastic pollution. To the extent the

request that CalRecycle "enforce" the statute is a recommendation regarding regulations addressing enforcement, it identifies no suggestion to which CalRecycle can respond. As explained in greater detail in the Final Statement of Reasons, the regulations lay out the statutory interpretations that will govern that enforcement.

I-11: Marcia Nation

Comment I-11-1

Plastics are a wonderful thing when used and then recycled or disposed of responsibly. However, plastic waste has found its way into our terrestrial and aquatic ecosystems to the detriment of people and planet.

SB 54 will protect families in California and this beautiful land we call home. Implementing SB 54 as written would show the world how to take meaningful action against plastic pollution.

Response to I-11-1

Comment rejected. The commenter requests "implementing SB 54 as written." However, the regulations do not alter SB 54; rather, they interpret and implement the statute as written. The commenter provides no identifiable suggestions as to how the regulations could better address the concern over plastic pollution.

I-12: Abby Krieckhaus

Comment I-12-1

Dear Cal Recycle,

Please implement SB 54 as written. Plastic waste is overwhelming our communities, environment and health. Revising SB 54 increases the risks for chemical recycling or incineration - these are not solutions as this would only worsen these harms. It is so extremely disappointing to watch California following the lead of the current federal government and rolling back all progress that actually protects us. There is so much potential to do good here and for California to continue to be a leading example of meaningful progress. I am so disheartened by the current state of legislation and having no representation that is fighting for true and meaningful change, and I hope this shows us something different. Represent the people and not corporations.

California should lead by example and stand up for proper recycling solutions. Keep SB 54 as written to reduce harm and make the package producers accountable for the cost of recycling.

Response to I-12-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, which is substantively the same as this comment.

I-13: Sara Foster

Comment I-13-1

Please implement SB 54 as written. Plastic waste is overwhelming our communities, environment and health. Revising SB 54 increases the risks for chemical recycling or incineration—these are not solutions as this would only worsen these harms.

Burning plastic is not a viable solution to this problem. Instead of fixing the problem, it exacerbates it.

California should lead by example and stand up for proper recycling solutions. Keep SB 54 as written to reduce harm and make package producers accountable for the cost of recycling.

Response to I-13-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, which is substantively the same as this comment.

I-14: Nichole Mihara

Comment I-14-1

Keep SB 54 as written. Plastic waste is continuing to defile our health environment and communities. Revising SB 54 increases the risks of chemical recycling or incineration which increases the risks to our environment and health.

California must continue to lead the way and stand up for safe and sustainable recycling solutions. Keep SB 54 as written to reduce harm and make the package producers accountable to the cost of recycling

Response to I-14-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, which is substantively the same as this comment.

I-15: Pearl Sires

Comment I-15-1

Please implement SB 54 as written. Plastic waste is overwhelming our communities, environment and health. Revising SB 54 increases the risks for chemical recycling or incineration - these are not solutions as this would only worsen these terms. California should lead by example and stand up for proper recycling solutions. Keep SB 54 as written to reduce harm and make the package producers accountable for the cost of recycling.

Response to I-15-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, which is substantively the same as this comment.

I-16: Zachariah Kahn

Comment I-16-1

Plastic waste is everywhere our parks beaches and neighborhoods. We deserve real solutions that protect our communities not false fixes like incineration.

Response to I-16-1

Comment rejected. No substantive response is necessary because the commenter provides no identifiable suggestions as to how the regulations could better address the commenter's concern about plastic waste. Regarding "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

I-17: Stephanie Mandelblum

Comment I-17-1

Dear CalRecycle,

I just signed the CALPIRG petition and am writing to you to please implement SB 54 as written. Plastic waste is overwhelming our communities, environment and health. Revising SB 54 increases the risks for chemical recycling or incineration - there is proof that plastic is responsible for these harms and would only worsen them. These are not solutions, and as someone in my 30's, I feel strongly that I don't want to live the rest of my life worried about cancer or environmental destruction in the name of consumerism.

California should lead by example and stand up for proper recycling solutions. Keep SB 54 as written to reduce harm and make the package producers accountable for the cost of recycling.

Thanks!

Response to I-17-1

Comment rejected. The comment incorrectly asserts that the proposed regulations "revis[e] SB 54." As explained in greater detail in response to comment I-6-1, that assertion is incorrect, and no change is appropriate.

I-18: Jennifer Rossini

Comment I-18-1

Plastic waste is everywhere — our parks, beaches, and neighborhoods. We deserve real solutions to protect our communities, not false fixes like incineration. California has been a leader in environmental policy. Implementing SB 54 as written would show the world how to make meaningful action against plastic pollution.

Response to I-18-1

Comment rejected. The comment incorrectly asserts that the proposed regulations do not implement SB 54 "as written." As explained in greater detail in response to comment I-6-1, that assertion is incorrect, and no change is appropriate.

I-19: David Weeshoff

Comment I-19-1

Governor Newsom: As a long term advocate for reducing plastic pollution flowing into our land and and oceans, I agree that if fully implemented, our landmark anti-plastic pollution law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), will reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians. However, the current draft regulations to implement the act greatly weaken the law, with broad exemptions for food products and weakened protections against a process known as "chemical recycling". Please remove the exceptions and keep the law as aggressive as possible.
I urge strong implementation of SB 54 that reflects the intent of the law.

Response to I-19-1

Comment partially rejected and partially accepted.

CalRecycle rejects the assertion that there is a "broad exemption" in the regulations for products merely on the basis that they are food products. CalRecycle interprets that assertion to concern section 18980.2(a)(2), which addresses when packaging for food and agricultural products will not be considered "covered material." Rather than establishing a broad exemption that always applies to food and agricultural products' packaging, that provision recognizes that PRC section 42060(b)(1) and (2) and (d) require exclusion of packaging when it would otherwise be not reasonably possible to comply with federal laws. To the extent the commenter's objection is that single-use packaging for food and agricultural products should always be considered covered material (i.e., that 18980.2(a)(2) should be removed), that approach would be unlawful under 42060(b)(1) and (2) because it would require CalRecycle to ignore potential conflicts with federal law.

Regarding "chemical recycling," the comment neither identifies any particular process ("chemical recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider. Accordingly, no change is appropriate in response to this comment. CalRecycle also rejects this comment with regard to chemical recycling for the reasons stated in response to comment O-62-1.

However, to the extent the commenter alleges that the exclusion from the definition of "covered materials" in section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable, CalRecycle accepts this comment. CalRecycle has revised section 18980.2(a)(2) to establish factual criteria that must be met for it to be considered not reasonably possible to use alternative packaging to avoid the conflict[AB6.1]. Those criteria constitute a clear, objective test and address the various ways alternative packaging might be used to avoid the conflict: using alternatives that satisfy all applicable mandatory standards without violating any law, eliminating or replacing the packaging components that cause the conflict, or redesigning packaging altogether. As explained in detail in CalRecycle's response to comment I-59-2, the revisions also clarify that the statute's reference to "guidelines" must be interpreted to refer only to mandatory guidelines, not voluntary ones.

The revisions also more clearly describe the procedures related to establishing that the exclusion applies, and those procedures have been modified to prevent entities from availing themselves of the exclusion in bad faith or without sufficient justification. In particular, the draft regulations now more clearly establish that: All submissions are subject to a completeness review by the Department before the exclusion can apply, the exclusion only applies when the packaging at issue is identified in the database (now described in subparagraph (D)), and entities cannot cause the exclusion to apply by submitting insufficient or unjustified notices substantially the same as those already deemed insufficient by the Department.

See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

I-20: Elizabeth Rosen

Comment I-20-1

Plastic waste is everywhere, including in our bodies. We deserve real solutions that protect our communities, not false fixes like incineration. Burning or chemically breaking down plastics is NOT a solution.
We asked for a policy to reduce harm, which resulted in SB 54. Please don't take this away.
Sincerely,
Elizabeth Rosen

Response to I-20-1

Comment rejected. The regulations do not alter SB 54; rather, they interpret and implement the statute as written. In particular, the statute does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. Regarding "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

I-21: Travis Gibrael

Comment I-21-1

For the sake of our bodies, our water, soil, and a livable planet, it's crucial that we end the practice of producing and disposing of single use plastics immediately. All single use containers should be compostable. Recyclable containers are very often a misnomer, as a very small percentage actually get recycled, and many that do use a chemical process that is essentially no different than burning it all. SB 54 went a long way towards making this a reality, but the proposal being here considered watered that progress down in a way that is wholly unacceptable. As a resident of California and an organism that relies on the Earth's ecosystems to live, I strongly encourage you to revert back to the original spirit of the bill and disregard Governor Newsom's efforts to weaken this regulation in service of his ego-driven and surely doomed presidential bid.

Response to I-21-1

Comment rejected. The law does not authorize CalRecycle to require any packaging to be compostable. Section 42050(b) expressly requires recyclability, determined according to PRC section 42355.51(d), to be sufficient. Regarding

the recommendation to "revert back to the original spirit of the bill," that recommendation is vague and sets forth no further proposed change.

I-22: Anonymous

Comment I-22-1

Local governments should not bear the responsibility of waste management for products it does not create, manufacture, or produce. Companies have a responsibility to know that whatever they put out into the world, they must also receive. Especially since they are classified as an individual in this country for whatever reason. Waste continues to be a large issue in California, and the implementation of this legislation, if done correctly, will greatly improve the cleanliness of California.

Response to I-22-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

I-23: Polly Estabrook

Comment I-23-1

Please implement SB 54 as written. Plastic waste is overwhelming our towns and contaminating our forests. It is floating in our oceans, entangling our marine animals, and washing up on islands far away - our wastes ruining their shores and making it more and more difficult to continue their livelihoods. We MUST take care of our garbage responsibly and not foist it off on animals and those humans who did not create it to the LARGE extent that we have.

Please implement SB 54 as written. Burning plastic is not a GREEN Way to deal with it. It releases noxious chemicals into the air and increases our air pollution. And here in Los Angeles, we already do not consistently meet the federal air quality levels.

In fact, those who create the plastic should bear the responsibility and cost of recycling it. If it is NOT recyclable NOW, it should not be permitted.

CA has been a leader in environmental policy. Let's do the right thing! Let's continue to lead and not greenwash our issues.

Your loyal and admiring Californian,
Polly Estabrook

Response to I-23-1

CalRecycle rejects this comment for the reasons stated in response to comment I-6-1.

I-24: Andrea Simmons

Comment I-24-1

I am seeking some clarification to SB54 Plastic Pollution Prevention and Packaging Producer Responsibility Act. In the definitions the regulation states the following:
(e) (1) **"Covered material"** means both of the following:
(A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.
(B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, "single-use food service ware" includes both of the following:
(i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.
(ii) Wraps or wrappers and bags sold to food service establishments.
Further, it defines packaging as such:
s) **"Packaging"** means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. "Packaging" includes, but is not limited to, all of the following:
(1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.
(2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.
(3) Transport packaging or tertiary packaging intended to protect the product during transport.
(4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:
(A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.
(B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.
So, my question is in regards to what is packaging versus what is the product and its applicability. For the purposed of understanding I included some examples.
For a product that is non-food and comes in a can (in this case it is an air freshener), the product is the fragranced material in the can. The can is an integral part of the product and remains as the product until end of life, then thrown away. This is not transport packaging, not secondary packaging, is the can required to be reported? It is the product and thrown out when the product is gone?

Another example, lipstick. The product is the tube of lipstick and in this case it is packaged in a box. The box and any inserts would be required to be reported, but what about the lipstick tube?
If the “devices” are an integral part of the product and are a function of the product, can you confirm these items are not reportable?

Response to I-24-1

Comment rejected. The commenter does not propose any revision to the regulations. Rather, the commenter requests that CalRecycle provide guidance concerning reporting requirements related to specific types of packaging. One purpose of the regulations is to establish rules for evaluating specific circumstances that arise, and the regulations do so. See, for example, section 18980.1(a)(4) and (17) (addressing what constitutes "components" of packaging and what constitutes a "product') and section 18980.6.8 (reporting requirements).

I-25: Clara Castronovo

Comment I-25-1

My name is Clara Castronovo, and I am an organizer with CALPIRG students. I am writing in support of implementing SB54 to the fullest extent, in order to protect our environment for future generations. I believe it is important for us to reduce our plastic consumption because plastic just keeps building up in our world. Plastic trash litters our coastline, microplastics invade our bodies, and every time we clean it up, more and more is pumped out to replace it. Clearly we need to stop producing so much plastic to begin with. The idea that recycling will fix our problems is a false one. At the moment, very little of the plastic produced actually gets recycled, meaning this is not actually a solution making a significant impact. The more time that goes by where we produce at such high rates, the bigger and bigger the problem becomes. In particular, "chemical recycling" is not the solution, and I am worried that the current regulations do not protect against this. Chemical recycling contributes to air pollution and creates toxic pollutants, and does not even actually recycle the plastic into new plastic, but is simply incineration by another name. This should not be allowed in our state. I support CalRecycle to strengthen the regulations so that only real recycling technologies are allowed. In addition, the broader categorical exemptions included in the draft regulations, reduce the efficacy and intent of the law. The point is to reduce plastic production. I urge CalRecycle to ensure the packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations. California is extremely influential, and can be a leader on the environment and plastic pollution if SB54 is implemented strongly. Even though implementing these regulations fully will be difficult, it is important to protect the environment and protect our future. Please consider implementing SB54 to reflect the full intent of the law. Thank you.

Response to I-25-1

Comment partially rejected and partially accepted. CalRecycle rejects the implied suggestion that recyclability should not be considered sufficient for packaging to comply with the law because such a requirement would contravene PRC section 42050(b), which expressly states that being recyclable pursuant to PRC section 42355.51(d) is acceptable. Regarding "chemical recycling," the comment neither identifies any particular process ("chemical recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider. Regarding incineration, see CalRecycle's response to comment I-6-1. Regarding chemical recycling more generally, CalRecycle further rejects this comment for the reasons stated in response to comment O-62-1.

Regarding the assertion that there are "broader categorical exemptions," no response is required because the commenter does not identify the exemptions alleged to be "broader." The commenter also does not explain how any provision could be assessed to be "broader." CalRecycle cannot evaluate that assessment because the commenter sets forth no comparison between the draft regulations and any other text (the commenter provides no alternative text for CalRecycle to consider). Regarding over-the-counter drugs, section 18980.2(a)(6) correctly interprets PRC section 42041(ee)(2)(A) as not exempting those that are cosmetics, as explained in detail in the Initial Statement of Reasons. See, also, CalRecycle's response to comment O-49-1.

Regarding agricultural commodities, there is no general exemption for packaging for such goods, as explained in response to comment I-19-1. However, CalRecycle accepts this comment to the extent it asserts that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

I-26: Joshua Bacolod

Comment I-26-1

My name is Joshua Bacolod, and I am from Placentia, California. I am currently a student attending UC Berkeley, and I am also a member of the California Public Interest Research Group's chapter at the university. I care about Senate Bill 54 because the plastics industry in the United States is responsible for an enormous amount of greenhouse gas emissions. Five years ago, the industry was responsible for emissions equivalent to the output of 116 average-sized coal power plants. Five years from now,

emissions from plastics production may surpass emissions from coal. This fact demonstrates the pressing need for California to lead the country in limiting emissions caused by plastic production. Additionally, current regulations permitting 'chemical recycling' do not effectively solve the problem at hand. The process is just another euphemism for burning plastic waste, which releases deadly toxins into the air that threaten public health and the health of the environment. I want to voice my support for CalRecycle in strengthening regulations that cut back on our current reliance on chemical recycling. Only recycling technologies that do not poison us and our environment should be allowed. I would also like to voice my opposition to exemptions for over-the-counter drugs and agricultural commodities, and I hope to see that these goods are fully covered by the regulations enforced by CalRecycle. I urge the implementation of Senate Bill 54 that reflects the spirit of the law, which intends to reduce terrible health impacts of plastic production and disposal on public and environmental health. As the state with the largest economy in the country, this bill is a critical opportunity for California to lead the rest of the United States in the global struggle against plastic pollution. We should not let this opportunity go to waste, and we must not undermine the progress our global community has made in putting an end to this issue.

Response to I-26-1

CalRecycle partially rejects and partially accepts this comment as described in response to comment I-25-1, which is substantively the same as this comment.

I-27: Mikki Horiguchi

Comment I-27-1

My name is Mikki Horiguchi from Manhattan Beach, California. I am currently a senior at the UC Berkeley CALPIRG Chapter interning for our Save the Bees campaign. Like many of my fellow Californians, I am deeply disappointed at the changes in the new draft regulations. SB 54 should be a leap towards properly addressing plastic pollution but without it being implemented at its fullest extent, it undermines the goals that would have held producers accountable for the cost of managing their plastic waste. As someone that grew up right on the water where the beach was an integral part of the town's culture, it's safe to say that this environment raised me and it's absolutely unforgivable and ridiculous to see such a beautiful place destroyed. Future generations should also be able to enjoy the nature and wildlife that California has to offer but instead, the equivalent of a dump truck of plastic is being dumped into the ocean every 45 seconds.

The new changes to SB 54 severely weaken protections against chemical recycling. It's incredibly disappointing to see this old and dirty practice being used as a bandaid solution for processing plastics when really, the name is misleading and it is simply a euphemism for one of the most harmful methods, incineration. Plastics-to-fuel plants have been proved to be less effective and efficient and is clearly not a viable alternative to traditional recycling methods as it does not help the plastic waste crisis at hand. To allow this in our state is a disservice to every Californian as it not only puts our wildlife

affected by marine debris at risk and dirties our homes but is a genuine public health concern. The burning of plastics releases toxic chemicals, contributes to air pollution, and escalates global warming. As a state famous for its abundant flora and fauna as well as the stunning Golden Coast, California should be championing real recycling technologies. I need CalRecycle to strengthen the regulations to ensure that our state is a leader in protecting our people from toxic pollutants. I also would like to see packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations.
California is at a defining moment in the global battle against plastic pollution. As the world's fourth-largest economy, its actions carry immense weight, and the implementation of SB 54 will send shockwaves across the nation and far beyond. The stakes could not be higher. How California enforces this law will determine whether it becomes a model of bold leadership or a missed opportunity that stalls momentum elsewhere. California must rise to the challenge, set the standard for the world, and drive forward, not dilute the progress already underway.

Response to I-27-1

CalRecycle partially rejects and partially accepts this comment as described in response to comment I-25-1, which is substantively the same as this comment. Additionally, section 18980.8(g) implements the statutory goal of holding producers "accountable for the cost of managing their plastic waste." The commenter does not explain how that provision fails to do so, nor does the comment propose any alternative approach.

I-28: Katy Nicholas

Comment I-28-1

My name is Katy Nicholas and I'm the Campus Organizer of the UCLA chapter of CALPIRG. Like others, I am greatly concerned with many of the changes in the new draft regulations.
I am also very disappointed by the edits which weaken protections against harmful chemical "recycling" The previous regulations, such as SB 54, were strong in their ability to communicate that technologies were absolutely unacceptable and not allowed if they created more hazardous waste than mechanical recycling. Now, the prohibition is vague and leaves a lot of room open for negative interpretation. This is not how we should be protecting our communties. Plastics-to-fuel plants are absolutely not recycling. They do not reduce demant for new plastics and they produce even more fossil fuels, contributing to air pollution and global warming. Even if they were good in theory, in reality they release harmful carcinogenic chemicals into the air.

California should be a leader in protection our communities from toxic pollutants. These regulations are sending us backward.

In conclusion, we need regulations that reflect the intent of SB 54 which is to greatly reduce the amount of plastic we are producing and discarding into our environment, and

to protect our communities from the environmental and health impacts of plastic production and disposal.

Response to I-28-1

Comment rejected. The commenter refers to "previous regulations" (described as "SB 54," which is legislation, not regulations) without presenting or recommending any particular provision being referenced. Regarding the general assertion that the regulations should further restrict technologies that generate hazardous waste, CalRecycle rejects that assertion because the comment presents no alternative to consider, and for the reasons stated in response to comment O-62-1. Moreover, CalRecycle rejects the recommendation that the regulations be revised so that "plastics-to-fuel plants" are categorically deemed not "recycling." No change is necessary because fuel generation (except for anaerobic digestion of certain organic materials) is already categorically not "recycling," as provided in Public Resources Code section 42041(aa)(2)(D) and acknowledged in section 18980.3.5(c) of the proposed regulations.

I-29: Anonymous

Comment I-29-1

I'm a resident of San Diego and very concerned about plastic pollution. Right now very little plastic gets recycled, most of it ends up overflowing in our landfills and in our environment. Plastic production isn't slowing down, it's growing faster than ever. The equivalent of a dump truck of plastic goes into the ocean every 45 seconds. We cannot continue on this path, we need real action!

Response to I-29-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-29-2

I'm concerned that current regulations do not protect against harmful chemical recycling, which is really just a new term for incineration and creates toxic pollutants that harm our environment and threaten public health. I want CalRecycle to strengthen the regulations so that only real recycling technologies are allowed in our state.

Response to I-29-2

Comment rejected. No substantive response is necessary because the commenter provides no identifiable suggestions as to how to "strengthen the regulations so that only real recycling technologies are allowed in our state." The regulations do not alter SB 54; rather, they interpret and implement the statute as written. In particular, the statute does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. Regarding "incineration," PRC

section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

Comment I-29-3

CalRecycle needs to ensure the packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations.

Response to I-29-3

CalRecycle partially accepts and partially rejects this comment. With respect to over-the-counter drugs, CalRecycle rejects the comment for the reasons provided in response to comment O-49-1. Regarding agricultural commodities, CalRecycle rejects this comment to the extent it suggests that there should be no exclusion for food and agricultural packaging, for the reasons stated in response to comment I-19-1. CalRecycle otherwise accepts this comment, however, to the extent it asserts that section 18980.2(a)(2) was unclear or potentially overly broad or unclear with respect to the exclusion of such packaging. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment I-29-4

California is at a pivotal moment in the global fight against plastic pollution. California is the fourth largest economy in the world, and the impacts of SB 54 are likely to ripple across the country and around the globe. How our state implements these policies is critical to the law's success. California must not squander this opportunity to lead the way!

Response to I-29-4

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

I-30: Vincent Chen

Comment I-30-1

As a Californian, I'm generally really proud to say that we're at the forefront of environmental policy, specifically on reusing, reducing, and recycling. For example, passing SB 619, we were the first state to have "bring your own container" laws, leading the way for Oregon and now Washington, and we were also the first state to have a statewide plastic bag ban for retailers (2016). In many ways, we are setting the example for how other states can transition to sustainability.
Which is why it saddens me that, on one of the most significant pieces of recycling legislation this decade, we are shying away from full effectiveness. CalRecycle's new

Standardized Regulatory Impact Assessment (SRIA) (released this past June) showed that, under full implementation, SB 54 could be saving both consumers and businesses a net 32 BILLION dollars, and could protect the environment to the tune of 25 BILLION dollars (in damages).

Response to I-30-1

Comment rejected. The comment suggests, without explanation, that CalRecycle is "shying away from full effectiveness." That vague assertion does not suggest changes to the proposed regulations or raise objections related to the rulemaking process, so no substantive response is possible. As set forth in greater detail in the Final Statement of Reasons, the proposed regulations fully interpret the law and ensure its implementation.

Comment I-30-2

I understand that, in the fix of draft regulations, we had to clear up some definitions, and I guess it makes sense that we have to move the clause about chemical recycling as an addendum in End-Market Identification. Sure.
But I think it's really unfair that we're being robbed of the common-sense policy that we deserve. One of the most important clauses that was entirely cut out was that products that are reusable and recyclable should be labeled and designed to be reusable and recyclable (18980.2.1). It's just common sense that, if I know a product is refillable, I can learn where to go to refill it. It's just common sense that a product that is meant to be reusable can last more than 4 uses, and can be washed. Cutting these common-sense sections from a watershed piece of recycling legislation is honestly a disservice to us Californians.
I'm all for revising regulations to be more streamlined and clear when it comes to definitions. But I can not support regulations that fundamentally ignore common sense definitions of a reusable product in legislation that is all about recycling. I can not support regulations that give up billions in savings for consumers and businesses right at the finish line. I can not support regulations that, as a Californian, I can't feel proud of.

Response to I-30-2

CalRecycle rejects this comment, which misconstrues the proposed regulations as "cutting" provisions from the legislation. The proposed regulations do not purport to, nor could they, nullify the provisions of Public Resources Code section 42041(af), which define "reusable" and "refillable" by setting forth the criteria that refillable and reusable items must meet. In tandem with the clarifications established in section 18980.2.1 of the proposed regulations, those requirements (including the requirement that products are "explicitly designed and marketed to be utilized multiple times for the same product") can be applied to factual circumstances on a case-by-case basis, without disregarding common sense. CalRecycle also rejects this comment to the extent it refers to recyclable items and recyclability. There is no recyclability requirement in statute for reusable items to be recyclable, and the statutory provisions to which the

comment relates (the "reusable" and "refillable" criteria) do not concern recyclability.

I-31: Eva Devyatovska

Comment I-31-1

I am reaching out to request clarification on the requirements for foreign producers under California's SB 54 (Plastic Pollution Prevention and Packaging Producer Responsibility Act).
Specifically, we would like to understand:
• Are companies without a U.S. legal presence required to appoint an authorized representative in order to register and comply with SB 54?
• If so, what are the qualifications or criteria for such a representative?
• Will detailed guidance on this be published by CalRecycle or through the Circular Action Alliance?

Response to I-31-1

Comment rejected. The commenter does not propose any revision to the regulations. Rather, the commenter requests that CalRecycle answer questions concerning how the statute applies to specific circumstances. One purpose of the regulations is to establish rules for evaluating specific circumstances that arise, not to answer all questions about specific scenarios. To the extent presenting example scenarios would be helpful to demonstrate how the regulations resolve questions like those posed in this comment, no changes to the proposed regulations are necessary for CalRecycle to do so. Moreover, to the extent that the commenter intended to request that the regulations specifically clarify how non-US companies can register and comply, no such clarification is necessary. The regulations contain no restrictions based on company location on how companies register and comply with the law.

I-32: Barbara Collins

Comment I-32-1

I'm a resident of Oceanside, CA and I am very concerned about plastic pollution, it's everywhere even in our bodies. We need to move now to cut plastic use, especially single use plastic and hold producers responsible!

Very little plastic is recycled, most of it ends up in our landfills and in our environment. Plastic production isn't slowing down, it's growing faster than ever. The equivalent of a dump truck of plastic goes into the ocean every 45 seconds. We cannot continue on this path, we need real action!

Response to I-32-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-32-2

I'm concerned that current regulations do not protect against harmful chemical recycling, which is really just a new term for incineration and creates toxic pollutants that harm our environment and threaten public health. I want CalRecycle to strengthen the regulations so that only real recycling technologies are allowed in our state. CalRecycle needs to ensure the packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations.

Response to I-32-2

CalRecycle partially accepts and partially rejects this comment for the reasons provided in response to comment I-25-1, part of which includes substantially all of this comment.

Comment I-32-3

California is at a pivotal moment in the global fight against plastic pollution. California is the fourth largest economy in the world, and the impacts of SB 54 are likely to ripple across the country and around the globe. How our state implements these policies is critical to the law's success. California must not squander this opportunity to lead the way!

Response to I-32-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

I-33: Gary Cohen

Comment I-33-1

My name is Gary Cohen, and I am including a report below that my company, GSC Consulting LLC, commissioned from a recognized food safety consulting firm regarding Article 2 exemptions.

I am a recently retired, 40-plus-year veteran of the packaging industry, a Food and Sustainable Packaging Specialist, an SQF Practitioner with more than 25 years of food safety experience. Today, I serve as the volunteer Executive Director of Tennessee Waste to Jobs, a coalition working to pass EPR legislation in Tennessee. I am fully committed to seeing SB 54 succeed and serve as a model for other states.

Response to I-33-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-33-2

My concern is that the current draft exemptions could unintentionally set a precedent that makes it harder for other states, including Tennessee, to adopt effective EPR legislation. **Based on my experience with FSMA (Food Safety Modernization Act) and HACCP protocols, I believe the draft language could potentially exempt 70–80% of food packaging found in a typical supermarket.**

Food safety and packaging are deeply interconnected, and HACCP principles are foundational to FSMA. Yet in conversations with stakeholders who follow SB 54, I often find little to no familiarity with HACCP. This raises the question of whether the regulatory implications for food packaging are being fully considered in the Article 2 amendments. Out of deep concern for the success of SB 54, I personally commissioned and funded an independent assessment to validate these risks. That report is being submitted below with these comments. **My request is simple: before finalizing Article 2, please pause and consult with qualified food safety experts to ensure that the draft exemptions do not unintentionally undermine the very goals and financial stability of SB 54.**

Response to I-33-2

Comment partially accepted and partially rejected. No explanation is provided for how any exemption might affect other states' ability to adopt EPR legislation, nor is the ability for states to do so a consideration authorized under statute. Instead, PRC section 42060(c) states that CalRecycle shall consider programs and approaches in other states (i.e., not the mere potential for such programs and approaches). Accordingly, no change is necessary to address this concern. Likewise, no change is necessary in response to the request that CalRecycle "pause and consult with qualified food safety experts." That request does not put forth any particular revision for CalRecycle to consider.

Regarding food packaging, as explained in response to comment I-19-1, the draft regulations do not broadly exempt packaging merely because it is used with food. CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment I-33-3

Assessment of SB54 Draft Article 2 – Exemptions for Food Packaging Commissioned by: GSC Consulting LLC, Nashville, TN
Date: August 28, 2025
Executive Summary
This document summarizes an expert assessment of Article 2 (Section 18980.2) of California's SB54 draft regulations published by CalRecycle on August 22, 2025, specifically the categorically excluded materials section. The assessment was funded by GSC Consulting LLC and conducted by Mark A. Dargay of Comprehensive Food Safety (CFS), a recognized leader in food safety and regulatory compliance. **see footnote

Overview of SB54 and Article 2
SB54 mandates packaging producers achieve a 25% reduction in single-use plastic packaging by 2032. Article 2 of the draft regulations (Section 18980.2) defines 'categorically excluded materials,' allowing certain food packaging to be exempt when required to meet food safety, microbial prevention, or structural integrity standards under FDA, FSMA, or similar regulatory frameworks.

SB54 Overview and Examples – Mark Dargay's Analysis
"Regarding SB54, especially Article 2: Covered Material and Covered Material Categories Section, 18980.2 / Categorically Excluded Materials, it is my (Mark Dargay's) opinion that as written, the regulation provides the opportunity for many food products to be exempt. Mark explains "In section (a) (2), it states the following: " "A determination of exclusion pursuant to this paragraph may consider standards to prevent microbial contamination or to maintain the safety or structural integrity of packaging under the Food, Drug, and Cosmetic Act; the FDA Food Safety Modernization Act..."

Key Findings from the Assessment
Mark Dargay's analysis indicates that many food packaging formats could/would qualify for exemption under Article 2, including:
Examples would be:
• A box of cereal: The cereal is placed in a film with a barrier to provide safety, quality, and shelf-life. A primary package. Food Contact Surface. This would be exempt.
• The cereal package is in a printed kraft board box. This is used for food safety to protect the contents of the cereal in the film package. A secondary package. This would be exempt
• 12 boxes of cereal may be in a corrugated case. This is used to protect the safety of the individual box of cereal. A tertiary package. This, too, could be exempt.

• A jar of pickles or tomato sauce: The metal lid and the glass jar contain the edible product and are used to kill any microorganisms in the product through pasteurization/retorting. These are food contact and the primary package. This would be exempt.
• If there was a tamper-resistant seal around the collar of the jar, this would be exempt.

• The glass jars of pickles are placed either on a corrugated tray with shrink wrap to contain them or in a corrugated case. Both are used to protect the product from foreign material contamination. This is a secondary package and would be exempt.
• A single container of Mentos Gum: The package has a complete shrink-wrapped label that covers the main container and the lid. The main container and the lid preserve the safety of the contents with the tamper-resistant seal built into the entire shrink-wrap. These are the primary and possibly the secondary package. Both would be exempt
• The individual containers of gum are placed in a kraft board 6-pack, but only for shelf presentation. This could be recycled, and the producer could possibly NOT be exempt.
• The 6-packs of gum are then packed in a corrugated case for shipping. This could be recycled, and the producer could possibly NOT be exempt.

Summary and additional examples of potential exemptions
• Barrier films used as primary packaging for cereals or perishables.
• Glass jars and metal lids used in pasteurized or retorted products.
• Tamper-evident shrink sleeves for products like gum or candy.
• Corrugated secondary packaging used to protect food containers during transit.
• Kraft board boxes designed for structural or microbial protection.

Mark Dargay's Conclusions & Recommendations
Based on the language in SB54, particularly Article 2, Section 18980.2 on categorically excluded materials, the regulation appears to create a broad scope for exemptions in food packaging. Because many food packaging components are directly tied to food safety, microbial control, or structural integrity under FDA and FSMA requirements, a wide range of primary and secondary packaging types—such as barrier films, glass jars, metal lids, tamper-evident seals, kraft board boxes, and corrugated shipping cases; could qualify as exempt.

As written, this framework has the potential to significantly reduce the applicability of SB54 to much of the food sector. While certain tertiary or display-related packaging may remain within scope, the vast majority of packaging used to protect food safety and shelf stability would likely fall under exclusions. This interpretation could substantially limit the regulations intended impact of packaging reduction and recycling within the food industry and SB54.

Based on these conclusions, I would recommend the following differentiation between exempt and non-exempt covered materials and provide case examples with regulators and industry stakeholders to test criteria against real packaging formats.

Recommended Exemption Framework
The assessment recommends distinguishing exempt vs. non-exempt packaging based on function:
**Safety-Driven Exemptions: **
1. Direct food contact packaging
2. Microbial/contamination control layers
3. Packaging needed for thermal/structural integrity

4. Tamper-resistant closures or seals

**Convenience-Driven (Non-Exempt) Packaging: **
1. Decorative or display packaging
2. Bundling or outerwrap for logistics only
3. Redundant layers not tied to food safety
4. Convenience components not required for safety

Conclusion
This assessment highlights the broad potential for exemption of food packaging under SB54's Article 2 language. The findings will support public comments to CalRecycle and internal evaluations by NSAC and other policy working groups. **Mark Dargay is the Director of Regulatory Compliance of Comprehensive Food Safety. His experience in the food industry is diversified and spans over forty years. Working in food safety and quality for all these years in three of the Fortune 500 global top ten food companies, coupled with extensive food safety consulting experience has provided Mark a deep and vast knowledge of food safety and packaging. CFS is an established, full-service, international food safety consulting leader, and specializes in providing best practice food safety and quality consulting, auditing and training services. The parent company is Rentokil, a $9 billion global leader that provides system and process auditing of food manufacturing companies with a focus of their compliance to regulatory requirements and industry food safety standards. They provide best practices for these programs to assure safe products are being manufactured to the public sector. They provide public and private food safety training on many areas of food safety that are components of federal, state, and local regulations.
For additional information, please contact:
Gary Cohen, GSC Consulting LLC – gary@tnwastetojobs.com – (615) 925-0867
Gary Cohen
Tennessee Waste To Jobs
Volunteer Executive Director
https://tnwastetojobs.com/
TWTJ Video Link
https://m.youtube.com/watch?v=1g8VP-2v7qY
USGBC LEED AP
SQF Practitioner
201-805-8555

Response to I-33-3

Comment partially rejected and partially accepted. This comment implies that it is inappropriate for many types of packaging for food not to be considered covered material. That assertion fails to acknowledge that PRC section 42060(b) requires the regulations to accommodate requirements under federal law for such packaging. As further explained in response to comment I-19-1, the proposed regulations do not exempt any packaging merely because it is food packaging or subject to laws relating to food safety. Moreover, the comment provides no analysis, such as how requirements under federal laws relate to packaging at

issue, to support its assertions that certain packaging would be considered not covered material under the proposed regulations. For other packaging, the comment merely states that packaging would potentially be excluded. In other words, the comment concedes that various types of packaging of concern may not be excluded.

Lastly, the comment proposes an "exemption framework" based on the function of packaging. That approach is unsupportable because it ignores the directive of PRC section 42060(b): The regulations must consider restrictions under federal law. Those restrictions may generally be "safety-driven," but nothing in statute allows CalRecycle to limit its consideration of federal law to such restrictions. Moreover, the distinction between "safety-driven" and "convenience-driven" packaging is not necessarily clear. Components or design features might serve both safety and convenience purposes, and the latter is inherently subjective. For these reasons, CalRecycle rejects the commenter's proposal.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1 explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

I-34: Shelly Hughes

Comment I-34-1

I have lived in Northern California for 50 years. The land and the people need protection. We need a long term vision of sustainability and innovation that includes discontinuing the use of plastics as much as possible. We need to strengthen our resolve to make laws that create less plastic waste. Why do the big chain grocery stores still provide plastic bags? Why do restaurants still provide plastic bags and utensils for take out orders? There are alternative products out there that we should use instead - these alternatives are biodegradable.
We need stronger regulations that will actually help us achieve a reality in which the plastics industry does not produce over 232 million tons of greenhouse gas emissions per year, any plastic that is made can actually be recyclable, and people don't have to buy a plastic bag along with their fruits and vegetables.

Response to I-34-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or

explanation of its objections to the proposed regulations. Regarding, "strengthen[ing] our resolve to make laws that create less plastic waste" and "need[ing] stronger regulations that will actually help us achieve a reality in which the plastics industry does not produce over 232 million tons of greenhouse gas emissions per year," the Legislature, not CalRecycle, makes laws. The regulations clarify, interpret, and implement SB 54 as written.

Comment I-34-2

The new exemptions to products that are regulated by the FDA and USDA will not effectively address the plastic waste crisis we're facing. Without a strong regulatory system in place products in the grocery store will continue to be made from nonrecyclable plastic that will end up hurting our environment and our health.

Response to I-34-2

Comment partially accepted and partially rejected. The commenter does not provide any detail for the assertion concerning the effect of "new exemptions" nor puts forth any recommended revision. In any event, as explained in response to comment I-19-1, the regulations do not generally exempt "products that are regulated by the FDA and USDA." To the extent this comment asserts that section 18980.2(a)(2) was unclear or potentially overbroad, however, CalRecycle accepts it for the reasons set forth in response to comment I-19-1. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment I-34-3

I'm concerned that the new language will not protect against chemical recycling, which is just incineration under a new name and actually creates toxic pollutants that get into our air and water. Pyrolysis is completely bankrolled by the fossil fuel industry and their investors because it will increase their profits - at the expense of public health.
We can't keep allowing plastic to take over our lives, so I strongly urge you to strengthen regulations so that the majority of foodware and packaging will actually need to be recyclable and compostable.

Response to I-34-3

CalRecycle rejects this comment for the reasons provided in response to comments I-19-1 and I-25-1.

I-35: Patrick Mundy

Comment I-35-1

CalRecycle - please do NOT water down the strict intentions of the original legislation, by creating loopholes and exceptions for prescription drugs and food.

Response to I-35-1

Comment rejected. As explained in response to comment I-19-1, the regulations do not broadly exempt packaging merely based on it being food packaging. Regarding prescription drugs, the regulations create no loophole or exception. The statute itself (PRC section 42041(e)(2)(A)(i)) unambiguously excludes packaging for them from the definition of covered material.

Comment I-35-2

Above all, do NOT allow exceptions for so-called "chemical recycling." This is a green-washing term for a set of practices (pyrolysis, gasification, and solvolysis) which require very high energy inputs, produce significant toxic emissions and waste, and whose primary output (things like pyrolysis oil) end up as fuel which, when burned, contribute greenhouses gases and toxic substances.

The EPA continues to pro-actively affirm that pyrolysis is equivalent to "other solid waste incineration" because ultimately, when you consider the downstream combustion of the resulting fuels that are produced, you have the same net impact on the atmosphere and environment - just some of the emissions are delayed in time. Weakening the original legislation's clear intent for California to be a leader in strong reduction of plastics use would be a gross dereliction of duty for CalRecycle. Don't fall prey to the industry green-washing. Preserve the strength of the original legislation and help us create a better and less-toxic future.

Response to I-35-2

CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, O-6-1, and I-25-1.

I-36: Tim and Karen Hudson

Comment I-36-1

We are writing in favor of retaining SB54s California's plastic pollution reduction law. We are against plastic recycling and incineration..

Response to I-36-1

Comment rejected. No substantive response is necessary because the commenter does not suggest changes to the proposed regulations. The regulations do not alter SB 54; rather, they interpret and implement the statute as written.

I-37: Karalina Hulbert

Comment I-37-1

Dear CalRecycle,
I am writing to provide public comment on the proposed amendments to California's landmark pollution reduction law, SB 54. Specifically, I strongly object to any amendments that weaken protections against so-called "chemical recycling" (also referred to as plastic pyrolysis or gasification).
Amended Section(s): [Insert the exact section reference once identified in the proposed regulations]
Reason for Objection:
"Chemical recycling" is not true recycling. It is a harmful form of plastic incineration that uses high heat to melt plastic and convert it into oil or other fuels, which are then burned and release toxic emissions. Reclassifying or permitting this practice under SB 54 would undermine the law's intent, which is to reduce plastic pollution at the source and ensure a transition to a safer, circular economy.
Allowing chemical recycling as a compliance pathway for producers will:
Increase greenhouse gas emissions and toxic air pollution in communities, particularly those already overburdened by environmental harms.
Undercut investments in real recycling solutions and upstream waste reduction strategies.
Contradict the purpose of SB 54, which is to reduce single-use plastics, not provide loopholes for the plastics and petrochemical industries.
Recommendation:
I urge CalRecycle to:
Reject any amendments that weaken SB 54 by permitting "chemical recycling" as an acceptable form of recycling or diversion.
Uphold the original intent of SB 54 by prioritizing source reduction, reuse, and non-toxic recycling methods.
Ensure transparency and accountability by requiring that all compliance strategies demonstrate measurable pollution reduction, not just repackaged incineration practices.
California has an opportunity to lead the nation in bold, meaningful plastic reduction. Weakening SB 54 at this stage would be a step backward, jeopardizing both public health and environmental justice.
Thank you for considering my comment. I urge you to protect the integrity of SB 54 and reject harmful loopholes for "chemical recycling."
Sincerely,
Karalina Hulbert

Response to I-37-1

Comment rejected. The regulations do not alter SB 54; rather, they interpret and implement the statute as written. In particular, the statute does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. Also regarding "chemical recycling," the comment neither identifies any particular

process ("chemical recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider. Regarding "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion. For greater detail, see comments I-6-1, O-6-1, and I-25-1.

I-38: Stephanie DeMott

Comment I-38-1

I am a mother and homeowner in Rohnert Park, CA.

I'm extremely concerned that CalRecycle is on the verge of gutting California's landmark plastic pollution reduction law, SB 54. The latest proposed regulations threaten to seriously weaken the law by loosening restrictions on so-called "chemical recycling" — a misleading term for what is essentially plastic incineration.

Let's be clear: "chemical recycling" is just a rebranding of an old, dirty practice. It involves melting plastic at high heat and turning it into oil, producing toxic emissions in the process. It's not recycling — it's incineration by another name, and it has no place in a law meant to reduce plastic waste and protect our environment and public health.

CalRecycle must stand by the intent of SB 54 and close the loopholes that would allow this dangerous industry to flourish under the false banner of sustainability.

Response to I-38-1

CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, O-6-1, and I-25-1.

I-39: Shirley Freriks

Comment I-39-1

A voice from the Nevada County community - and WasteNOT Plastics - Single-use plastics - mostly food containers - are the target of our marketing and public events like Plastic Free July. We are working with our restaurants and takeout businesses to stop using SUPs with pretty good success. But the big markets are the main source of consternation. Some want to make a change, but their hands are tied to do a really good job of stopping SUPs but UNTIL THE INDUSTRY MAKES NON-TOXIC, TRULY COMPOSTABLE PACKAGING, the huge problem will not be solved. Even the Coop cannot get much converted.
HEALTH OF PEOPLE, PETS, AND THE ENVIRONMENT ARE AT STAKE because of MICROPLASTICS, AND THE TOXINS that come from them to our bodies and the body of our Earth. PLEASE REINSTATE the appropriate language in SB 54 to force the Producers to take responsibility and change their unhealthy way of doing business - and

be good citizens to protect our health. I know they can do it - and clearly they have the big money to be able to do the research and make substantial changes. Let's help them DO it.

Response to I-39-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

I-40: Sam Trezona

Comment I-40-1

Plastic pollution threatens everything that we stand for: our air, our water, and our protected land. The U.S. plastics industry was responsible for at least 232 million tons of C02e gas emissions in 2020, equivalent to the average emissions from 116 average-sized coal-fired power plants. These emissions are contributing to our climate crisis, threatening all of our livelihoods.

Plastic also just ends up everywhere. The equivalent of a dump truck of plastic goes into the ocean every 45 seconds. Plastic has been found in our bodies. Plastic has even been found at the bottom of the Mariana's Trench, the deepest point in the Ocean.

So, we must be doing everything we can do to prevent C02 emissions and more plastic from being created.

California is supposed to be a leader in plastic reduction. But, current regulations do not protect against harmful "chemical recycling," which is mostly just a new term for incineration. Chemical recycling creates toxic pollutants that harm our environment and our public health. Chemical recycling also doesn't reduce demand for new plastic creation, either.

CalRecycle should strengthen the regulations to exclude chemical recycling from an exemption of SB 54. There are recycling technologies that decrease emissions, decrease the need to create new products, and increase the lifetime of our materials. Those are the technologies that should be exempt.

Response to I-40-1

CalRecycle rejects this comment for the reasons stated in response to comments I-6-1 and O-62-1. More specifically, Public Resources Code section 42041(aa)(5) does not authorize CalRecycle to categorically exclude an entire class of recycling technologies; rather, it requires consideration of particular technologies with respect to generation of hazardous waste. Regarding the assertion that "recycling technologies that decrease emissions, decrease the need to create new products, and increase the lifetime of our materials" should

be exempt, no response is required because the commenter does not identify such technologies, and CalRecycle cannot discern what it would mean to render a technology "exempt." That phrasing could, for example, refer to excluding certain technologies from the definition of "recycling," but that effect would conflict with the commenter's apparent position that the technologies should be favored over others. To the extent the commenter intended to assert that "chemical recycling" should not be considered "recycling," CalRecycle also rejects the comment for the reasons stated in response to comment O-62-1.

I-41: Anonymous

Comment I-41-1

Hello, my name is Bithia Ramos. I currently reside in Long Beach, CA.

Since I was young, I saw the convenience of plastic, as it was normalized literally everywhere. Since its explosion in the recent decades, studies have shown its many detrimental and negative impacts. To hear good news, is rare but always accepted. So, to hear of SB54 and its passing of it in 2022, was a huge relief to many Californians that knew regulations were needed to curb plastic pollution, because it is and was getting out of hand. The proposed regulations would put it all on the Producer, which was a huge victory to consumers. This was a landmark anti-plastic pollution law that would change everything for the better. Now this is being changed? to the benefit of who? because it's not what the people want. This new chemical recycling option which is just incineration of plastic plus exempting big plastic producers, which include food and agricultural products, which will setback what this law and why this law was established in the 1st place which again is to curb plastic pollution.

Exemptions do not belong in this law. Producers must be held accountable. Regulations need to be strengthened. No chemical recycling should be occurring when talking about curbing plastic and its pollution specially when there are far better and safer alternatives, like enforcing SB54 in its entirety as first proposed and accepted. Do the right thing for the people. Thank you for your time.
.

Response to I-41-1

CalRecycle partially accepts and partially rejects this comment. To the extent this comment concerns incineration and asserts that chemical recycling should be categorically prohibited, CalRecycle rejects it for the reasons stated in response to comment I-25-1. To the extent this comment asserts that the proposed regulations would exempt all food and agricultural packaging, CalRecycle rejects that assertion for the reasons provided in response to comment I-19-1. CalRecycle accepts this comment, however, to the extent it asserts that section 18980.2(a)(2) was unclear or potentially overbroad. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in

response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

I-42: Adrian Martinez

Comment I-42-1

My name is Adrian Martinez and I live in Long Beach. I am a member of Csulb CALPIRG California. When I first heard of SB 54 I felt that we were moving in the right direction. I care about plastic pollution as I believe it is the key issue that will determine our future as it is already affecting us as a society now. Chemical recycling is the main issue spreading toxic and dangerous pollutants towards the public. According to the EPA Toxics Release Inventory in 2023 found about 500 toxic chemicals in the air.. I personally relate to this issue as I have lived in West Long Beach which is the closest part of Long Beach to the refineries in Wilmington that burn and develop smog around the lower part of LA county. I've been told countless times that our life expectancy is about 3 years lower than the national average. With all this in mind I hope we can push towards cleaner recycling and for Cal recycle to strengthen regulations on recycling.

Response to I-42-1

Comment rejected. This comment only addresses regulations by urging CalRecycle to "strengthen regulations on recycling." That nonspecific statement about regulations does not assert any objection or recommendation that CalRecycle can respond to. Accordingly, no substantive response is required.

I-43: Colin Loveland

Comment I-43-1

My name is Colin Loveland, and I am from Highland, California. I go to UCR and am a board member of the UCR chapter of CALPIRG Students. As someone who deeply cares about the environment and the state of the world I will inherit from previous generations and will pass along to future generations, I am greatly concerned about the proposed gutting of SB 54 and the addition of chemical recycling into California.
All Californians have witnessed firsthand the pervasive plastic pollution throughout both our urban and our natural environments. I have seen plastics washing into storm drains that eventually lead into rivers (and then the ocean) during storms in my neighborhood. Then, in December 2023, my family and I were in Palm Springs exploring the desert filled with blooming purple verbena - only for the splendor of the natural environment to be marred by plastic bags and other waste buried in the blowsand, embedded in the dunes, and entangled in the roots of the plants. While we did the best we could to clean it up, the ever shifting winds of the Coachella Valley would render our efforts futile by blowing in more plastic that would settle in the spaces that we had cleaned.

Not only are all these plastics toxic to animals and plants, they are also very dangerous to humans. In 2020, the US plastics industry was responsible for at least 232 million tons of CO2 gas emissions, which is equivalent to the average emissions of 116 average-sized coal power plants. Therefore, the plastics industry represents a vicious accelerant in the process of climate change that continues to harm the planet.
In 2022, California rose to meet the moment by passing the landmark SB 54, which is projected to reduce plastic pollution by 23 million tons over 10 years in its current form. That would be monumental in the fight against plastic pollution. However, new proposed regulations would undermine this goal by opening broad exemptions into the policy. Additionally, new regulations would introduce chemical recycling - essentially incineration - into California. This process, hailed as a gamechanger by the plastics industry, instead represents a false god, as burned plastic gets converted into fuel that will be reused to make new plastics and releases further carbon emissions that worsen climate change.
California, as the 4th largest economy in the world and the home of nearly 40 million people, must remain at the forefront of the fight against climate change in order to help lead the world into a more sustainable future. Therefore, instead of weakening the regulations, CalRecycle should institute a strict exemption process for those who truly need it and prevent harmful, toxic chemical recycling from taking root in California.

Response to I-43-1

CalRecycle rejects this comment for the reasons stated in response to comment I-19-1 and 1-25-1.

I-44: Caleb Weis

Comment I-44-1

Hi, my name is Caleb Weis and I am a Campaign Associate for Environment California, based in Oakland.

I have cared deeply about the environment since I was a kid growing up in the woods of northern Vermont. I never imagined, however, that we would reach a point when protecting our environment would be so intertwined with protecting ourselves. The statistics about microplastics' impact on health are downright scary, and when coupled with the terrifying amount of plastic waste that we currently produce—2,000 truckloads per day!—provide more than enough reason to significantly limit our plastic consumption, as SB54 set out to do.

Therefore, I would like to state my strong opposition to recent provisions which both allow chemical recycling under certain circumstances and implement broad exclusions of packaging for over-the-counter drugs, food, and agricultural products. Both of these practices would significantly threaten the efficacy of SB54. Chemical recycling creates toxic pollutants that harm our environment and threaten public health, and doesn't reduce our demand for new plastic to be created. Meanwhile, broad exclusions for over-

the-counter drugs, food, and agricultural products will result in more plastic being sent to landfills or left to pollute our environment.

I urge you to strengthen SB54 regulations so that only real recycling technologies are allowed in our state. Furthermore, I ask that you ensure that packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations. Thank you.

Response to I-44-1

CalRecycle partially accepts and partially rejects this comment. Regarding over-the-counter drugs, CalRecycle rejects this comment for the reasons stated in response to comment O-49-1. To the extent this comment asserts that chemical recycling should be categorically prohibited, CalRecycle rejects it for the reasons stated in response to comment I-25-1. See, also, CalRecycle's response to comment O-62-1 regarding chemical recycling. To the extent this comment asserts that the proposed regulations would exempt all food and agricultural packaging, CalRecycle rejects that assertion for the reasons provided in response to comment I-19-1. CalRecycle accepts this comment, however, to the extent it asserts that section 18980.2(a)(2) was unclear or potentially overbroad. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

I-45: Mark O'Connor

Comment I-45-1

I volunteer with Surfrider San Diego and work on reducing the amount of plastic being used. Plastic contains harmful chemicals that leach into the environment. We are breathing, eating and drinking these nano plastics into our bodies. The chemicals that are in the plastic are carcinogenic. They cause cancer which is killing people of all ages.

That is what makes this so important. Micro and Nano plastics with their chemicals are killing us. We need to keep SB54 as a starting block to reduce the use of some of these plastics. It must come to an end. We need to transition to organic compostable products where we can. Let's stop this destruction of ourselves and keep SB54 strong so we can live healthier lives. I ask you for your support. Mark O'Connor

Response to I-45-1

Comment rejected. CalRecycle rejects this comment to the extent the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. Further, the Legislature,

not CalRecycle, "passed" SB-54, and the regulations clarify, interpret, and implement the legislation as written. CalRecycle does not have the authority to go beyond the legal framework of SB 54, and the law specifically allows recyclability versus composability for certain products, such as packing (section 42050(b) expressly requires recyclability, determined according to PRC section 42355.51(d)). Regarding the recommendation to "keep SB54 strong," that recommendation is vague and sets forth no further proposed change.

I-46: Yen Nguyen

Comment I-46-1

I'm concerned that current regulations do not protect against harmful chemical recycling, which is really just a new term for incineration and creates toxic pollutants that harm our environment and threaten public health. I want CalRecycle to strengthen the regulations so that only real recycling technologies are allowed in our state. CalRecycle needs to ensure the packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations.

California is at a pivotal moment in the global fight against plastic pollution. California is the fourth largest economy in the world, and the impacts of SB 54 are likely to ripple across the country and around the globe. How our state implements these policies is critical to the law's success. California must not squander this opportunity to lead the way!"

Response to I-46-1

CalRecycle partially accepts and partially rejects this comment as described in response to comment O-110-2, which raises the same objections as does this comment.

I-47: Kathy Schaeffer

Comment I-47-1

When SB 54 was signed into law, Californians celebrated a path forward for significant reduction in plastic waste. We looked forward to a healthier environment with less demand for petrochemical products. Sadly, SB 54 rulemaking seems to benefit the plastic petrochemical industry instead of curbing plastic production and subsequent waste. The chemical recycling industry could now have "permission" to create more plastic and more pollution. Chemical recycling does NOT solve our plastic problem. Creation of more plastics with chemical recycling adds to emissions and encourages greater production of plastic that will continue to harm the health of people and the environment. Carve-outs that support the plastic industry and chemical recycling should not be allowed. Please do not take us backward after all of the work that has been done to reduce plastic production, plastic waste, and its devastating effects.

Response to I-47-1

Comment rejected. The statute does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. Accordingly, no change is appropriate in response to this comment. CalRecycle further rejects this comment for the reasons provided in response to comment O-62-1.

I-48: Katharine Pan

Comment I-48-1

Plastic is everywhere. Bags, utensils, even food from the supermarket comes wrapped in plastic. And all that plastic eventually finds its way into the ocean, harming countless plants and animals along the way. The equivalent of a dump truck of plastic goes into the ocean every 45 seconds. And that makes its way back to our communities. Microplastics have been found in drinking water and even in people's brains. We need tighter regulations on the overabundance of plastic that is harming our environment and our bodies.

The current regulations do not protect against harmful "chemical recycling", which is mostly just a new term for incineration. Burning plastic creates toxic pollutants that further harm our environment and threaten public health. The current regulations unlawfully exclude new, broad categories of products (namely food and agricultural products as well as over-the-counter drugs), which will result in more plastic being sent to landfills or left to pollute our environment. Adding these clauses weakens the original bill and does little, if anything, to address the problem of plastic abundance.

CalRecycle should strengthen regulations so that we can work toward a future where the environment and public health don't have to suffer because of the overproduction of plastic.

Response to I-48-1

CalRecycle partially accepts and partially rejects this comment as described in response to comment O-110-2, which is substantively the same as this one.

I-49: Anonymous

Comment I-49-1

American Home Furnishing Alliance Comments to CalRecycle on EPR Packaging
Re: Public Comments on Draft Regulations for SB 54 – Proposed Exemptions for Furniture Packaging

Dear CalRecycle,

On behalf of the American Home Furnishings Alliance (AHFA), we respectfully submit the following public comments regarding California's draft regulations under Senate Bill 54 (the Plastic Pollution Prevention and Packaging Producer Responsibility Act). We urge CalRecycle to include an explicit exemption for Furniture Packaging associated with finished furniture goods and products.

Product Integrity and Long-Term Protection Are Crucial
Furniture requires robust packaging to safeguard their integrity during long-distance transit from manufacturing facilities to retail showrooms and directly to consumers. One piece of furniture produced and sold domestically can be cross docked an average of more than 13 times before reaching its final destination. Furniture packaging performs a durable, multi-function protective role that ensures products arrive in saleable condition, thereby reducing waste from damage or returns and repairs.

Existing Packaging Compliance Standards Are Already High
AHFA members companies and furniture manufacturers already adhere to rigorous industry standards such as ISTA (International Safe Transit Association) testing and National Motor Freight Classification (NMFC) Rule 181 protocols which verify packaging efficacy and safety. These established practices help prevent damage, reduce returns, and ensure a better environmental outcome. A broad sweep of SB 54's EPR obligations to include furniture packaging would duplicate existing safeguards and introduce unnecessary compliance burdens.

Consistent with Broader Exemption Framework
The proposed regulatory drafts already include exemptions for packaging subject to federal food and agricultural standards as well as secondary/tertiary packaging related to California Redemption Value (CRV) products. Extending the same logic to durable furniture packaging is both consistent and equitable, given its functional parallels.

Administrative and Economic Realities
Including furniture packaging in SB 54's compliance would introduce undue reporting, fee obligations, and operational complexity for producers already committed to ensuring product integrity. Furniture packaging has numerous interpack and covered materials from pamphlet instructions, plastic bags containing screws and hardware, various corner and angle pads, wood skids, etc. Not all packaging in our industry for specific products is the same and no standardization exists because of the unique aspects of our products. The strenuous reporting burden for every aspect of a packaging material adds an enormous amount of work for furniture compliance professions and many furniture manufacturers cannot support or afford to add more compliance workers to their payroll amid constant economic uncertainties and already thin margins in the industry.

Using Inferior Packaging Materials will Increase Carbon Emissions
Requiring furniture manufacturers to replace effective protective interpack materials such as wood skids, Styrofoam, etc. with bulkier or less durable and more expensive substitutes (e.g., honeycomb or excess layers of corrugated paper) will have unintended

environmental consequences. Inferior packaging requires larger and heavier cartons to achieve the same level of product protection, which reduces how many units can be loaded onto a single truck. Fewer units (pieces per load) mean more trucks on the road, more fuel consumed, and ultimately higher greenhouse gas emissions associated with transporting the same amount of furniture into California. Rather than reducing impacts, this shift would inadvertently increase the overall carbon footprint of furniture distribution.

Existing Furniture Packaging Recycling Streams
A significant portion of furniture packaging already flows smoothly into existing recycling streams through well-established dealer delivery and backhaul systems. In most cases, consumers never even handle the packaging materials, as retailers, third-party carriers and delivery partners are responsible for unpacking products, collecting the materials, and channeling them into delineated recycling programs. This closed-loop system ensures that corrugated, foam, and other packaging materials are consolidated at scale, where recycling is most efficient and verifiable. Rather than layering duplicative obligations, a more effective path would be to recognize this existing infrastructure and tie any reporting requirements to measurable commitments from our industry to continue transitioning toward more environmentally friendly materials over time.

Proposed Exemption Language
We propose that CalRecycle explicitly recognize an exemption for packaging used to protect finished furniture goods during transport, on the basis that: It qualifies as “long-term protection” packaging for goods with a lifespan greater than five years and due to our transportation and delivery protocols already demonstrated through ISTA and Rule 181 standards. Furniture packaging is not single-use material but essential to product protection and avoiding waste and limiting more carbon emissions and greenhouses gases into the environment.

Conclusion
AHFA respectfully requests that CalRecycle codify an exemption in the SB 54 regulations for finished furniture goods that meet the criteria outlined above. This approach supports both environmental goals—by preventing damage-related waste—and regulatory intent—by focusing EPR burdens where they will drive meaningful reduction of single-use packaging.
Thank you for your consideration. If helpful, we would welcome the opportunity to discuss supporting data or participate further in the rule-making process.
Sincerely,
American Home Furnishings Alliance

Response to I-49-1

Comment rejected. The commenter requests that CalRecycle "codify" an exemption for a particular category of goods: finished furniture goods. However, CalRecycle does not have general authority to create categorical exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical

exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

To the extent the commenter's suggestion is that Public Resources Code section 42041(e)(2)(F) ("[p]ackaging used for the long-term protection or storage of a product that has a lifespan of not less than five years") applies to transport packaging for furniture goods, CalRecycle declines to adopt that interpretation. That interpretation is untenable on its face because transport packaging is not used for long-term storage; it is used for transporting packaging and expressly identified as non-exempt "packaging" in Public Resources Code section 42041(s)(3).

I-50: Charlotte Ward

Comment I-50-1

Nearly half of all plastic that is produced is intended for one time use, and as a young person growing up in the silicon valley, I have seen the devastating impact that single use plastics lifespan can have on California's environment, and I value California's efforts to break away from their harmful implications. However, the current regulations do not protect against harmful "chemical Recycling", which is mostly just a new term for incineration. Chemical recycling creates toxic pollutants that harm the environment and threaten the public's health and does not reduce the demand for new plastics to be created. I urge CalRecycle to strengthen current regulations to discourage broad exclusions of product packaging and instead institute an exemption process, as well as ensure that only real recycling technologies are allowed in our state.

Response to I-50-1

Comment partially accepted and partially rejected. The commenter requests that CalRecycle "strengthen" the regulations in regard to chemical recycling yet fails to provide any specific changes to the regulatory text by which to accomplish this. Further, regarding the commenter's concerns about "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion. Therefore, no changes concerning chemical recycling are necessary in response to this comment. To the extent the comment proposes that all processes that may be defined as "chemical recycling" be prohibited, CalRecycle further rejects the comment for the reasons stated in response to O-62-1. Regarding incineration specifically, CalRecycle rejects the comment for the reasons stated in response to comment I-6-1. Likewise, no change is necessary regarding the nonspecific assertion that the regulations should "discourage broad exclusions" because the comment does not identify regulatory provisions relevant to that assertion or provide

alternatives for CalRecycle to consider. To the extent that part of the comment was intended to concern the effect and scope of section 18980.2(a)(2) (concerning conflicts with federal law), however, CalRecycle accepts it for the reasons stated in response to comment I-19-1. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2). To the extent it was intended to concern section 18980.2(a)(4)-(6) (regarding medical-related goods), CalRecycle rejects it for the reasons stated in response to comment O-49-1.

I-51: Peter Slote

Comment I-51-1

Unless I am mistaken, there is no statutory prohibition to recipients of SB 54 cost reimbursements (i.e., service providers that make eligible capital investments to process covered materials) from also obtaining or seeking to obtain reimbursement for those same costs from rate payers, that is, "double dipping". The absence of such statutory prohibitions is a glaring omission in legislation expressly intended to shield rate payers of those very costs.

There is a proposed means by which local jurisdictions will be apprised of costs for which their service providers are reimbursed by the PRO. While this will be a helpful tool to enhance transparency, it is not a statutory prohibition from including reimbursed costs in rate payers' rates. "Double dipping" needs to be illegal.

Relying solely on that informational tool to deter fraud and abuse will disproportionately burden local jurisdictions with policing and enforcing the exclusion of reimbursed costs from rates. CalRecycle should not dismiss how burdensome that would be.

High stakes disputes between service providers and local jurisdictions over capital costs are not uncommon, and are often complex, contentious, and costly to resolve. The faith expressed by some who dismiss this threat and think that the routine (and highly variable) local administration of franchise agreements is adequate protection against some portion of the billions in SB 54 reimbursements becoming windfall profits, is misplaced if not terribly naive.

Local franchise agreements are contracts used to establish local services and to fund those services through rates. Local franchise agreements are NOT primarily instruments of law enforcement and should not be relied upon as the primary means to ensure service providers comply with SB 54. At the same time, local franchise agreements rely on state laws and regulations, because franchised service providers are required to follow all laws and regulations, as in any municipal contract. What then would be the basis in law for a local jurisdiction's case, if there is no state statue prohibiting a service provider from including reimbursed costs in its rates? I urge

CalRecycle to incorporate regulations to prohibit "double dipping" uniformly throughout the state and give local franchise agreement administrators a firm legal foundation to reject double dipping should it occur.

Looked at another way, what justifies NOT incorporating a statutory prohibition from including reimbursed costs in rates, in legislation expressly intended shield rate payers from those very costs? "Undue intrusion by CalRecycle in local franchises"? I spent 23 years administering franchise agreements worth billions of dollars in services and I doubt any local franchise administrators would be worried about that whatsoever.

The risk that service providers might include costs for which they are reimbursed in rates is not theoretical. Billions of dollars in capital investments will flow to service providers in the early years of SB 54 implementation. There are myriad means by which providers could foist such costs upon rate payers through misrepresentation, inattention of lack of local controls, misallocation of costs at facilities that serve multiple jurisdictions, brazen profiteering, etc. Given the asymmetrical access to financial information with the service providers having far more information and comprehension than all but the most well-resourced and sophisticated jurisdictions they serve, relying on private and corporate service providers' good faith to diligently exclude reimbursed costs from rates in every instance in every local jurisdiction throughout California is magical thinking, and would fail a reasonable test of due diligence of the state protecting rate payers.

Furthermore, CalRecycle would reasonably be subject to claims of unfunded mandate if it neglects to specify the funding method for these regulations and to clarify that the funding method is NOT local jurisdiction general funds, local ratepayers or taxpayers.

Identifying and incorporating the solution to this flaw in SB 54 should not be the sole responsibility of the PRO. This flaw requires a statutory solution, not a mere procedural tool. However, one common-sense opportunity to help protect rate payers would be to require the PRO to include in its contracts a provision that prohibits recipients of reimbursements from the PRO from seeking to recoup those same costs from any other party, i.e., local jurisdictions or rate payers. Ultimately, CalRecycle must incorporate regulatory prohibitions to deter "double dipping" by service providers and provide local jurisdictions a legal basis to enforce against fraud and abuse.

Response to I-51-1

CalRecycle rejects this comment. The comment primarily identifies a "flaw in SB 54" that the commenter contends "requires a statutory solution." CalRecycle cannot, via regulation, provide such a solution. In any event, to the extent the cost determination and payment process proposed in a producer responsibility plan fails to account for the commenter's concerns about "double dipping" (e.g., costs passed on to ratepayers despite being recovered from the PRO by a recycling service provider), such a plan may be subject to rejection because the plans must provide for funding in a manner that "allow[s] local jurisdictions to protect ratepayers from increased costs" (PRC section 42060(a)(1). A PRO's

plan will be subject to scrutiny with regard to whether it will fund costs accordingly, and revisions may be required pursuant to section 18980.6.2(a), as well as pursuant to section 42051.1(b)(1), which requires plans to detail how the PRO will implement"[a]ctions and investments . . . in order to meet the requirements of [SB 54]." If a plan fails to describe cost determinations and payments with sufficient specificity regarding any relevant requirement, such as those concerning effects on ratepayers, the plan may be subject to rejection. Lastly, CalRecycle does not have the authority to dictate how local jurisdictions allocate SB 54 funds or structure their ratepayer calculations, or any authority over ratepayer assessments. CalRecycle cannot lawfully depart from the statutory provisions in Public Resources Code section 42051.1(g) that require payment of costs to local jurisdictions and recycling service providers incurred due to requirements of the Act. The proposed regulation at section 18980.8 is consistent with the statutory text and legislative intent to pay these costs to local jurisdictions and recycling service providers.

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

I-52: Emerson Damiano

Comment I-52-1

Hello, my name is Emerson Damiano, and I grew up in Denver, Colorado, and am now a resident of Los Angeles.

I have always been passionate about reducing plastic pollution because it is an incredibly disastrous problem that causes a multitude of health effects and environmental crises. Microplastics have been found in the deepest depths of the ocean, where humans have little to no access, proving the extent of our impact on our surrounding environments via our plastic production. In fact, the equivalent of one dump trunk of plastic goes into the ocean every 45 seconds.

SB54 was a groundbreaking legislation regarding plastic pollution regulation in the United States. However, this legislation is at risk of being weakened. Current regulations do not at all protect against harmful chemical recycling, which is quite literally just a new term for incineration. Chemical recycling creates toxic pollutants that harm our environment and threaten public health and does not reduce demand for new plastic to be created. Additionally, these regulations unlawfully exclude new, broad categories of products, such as food and agricultural products or over-the-counter drugs, which leaves more plastic to pollute the environment.

Therefore, CalRecycle should strengthen the regulations so that only real recycling technologies are allowed in our state, not chemical recycling. CalRecycle should also not allow for board exclusions of packaging for the aforementioned products, but instead institute an exemption process.

Response to I-52-1

CalRecycle partially accepts and partially rejects this comment as described in response to comments I-50-1 and O-110-2, which are, collectively, substantively the same as this comment.

I-53: Felix Byrne

Comment I-53-1

Dear CalRecycle,

The excessive plastic pollution in our world is harming both the environment and people's health everywhere. California's original Plastic Pollution Producer Responsibility Act that mandated to reduce the production of plastic products. That however, will all be pointless if Governor Newsom and CalRecycle allow for what is called "chemical recycling".

The process of "chemical recycling" is contradictory to the original goal, as it takes a great amount of energy, causes pollution itself, and does nothing to stop the production of single-use plastics. This takes away the entire point of the act in the first place, and is not an alternative to the solution.

That is why I, alongside CALPIRG, urge CalRecycle to stand by the original Plastic Pollution Producer Responsibility Act SB 54. This will greatly reduce the use of plastic and plastic pollution in California, therefore helping prevent them from being tossed into our ecosystems, harming plant life and animal life, as well as protecting communities from the health dangers that come with improper disposal and use. If we don't start to change now, it will be too late.

Response to I-53-1

Comment rejected. Regarding "chemical recycling," the comment neither identifies any particular process ("chemical recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider. Accordingly, no change is appropriate in response to this comment. Please also see responses to I-6-1, I-19-1, I-25-1, and O-6-1.

I-54: Zach

Comment I-54-1

The hijacking of this bill by the plastic packaging industry is nothing short of insidious and self-defeating. The people of CA deserve better than this kowtowing.

Response to I-54-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-54-2

Exemptions are out of hand, they should be addressed individually, not as a group or sector.

Response to I-54-2

CalRecycle rejects this comment because it lodges a general objection but identifies no specific part of the regulations at issue and offers only a vague suggestion. To the extent a response is required, CalRecycle interprets the suggestion to be that the regulations should not implement any categorical exemptions. That suggestion is untenable because statute expressly calls for certain categorical exemptions in Public Resources Code section 42041(e)(2); the regulations cannot nullify those provisions, nor can they disregard the directive in section 42041(b) that the regulations avoid conflicts with federal laws and regulations.

Comment I-54-3

End the production of single use plastics via their sale in California. That will make a big difference that the industry will need to follow. This bill is instead rolling over to industry and letting them decide on the free market what works.

Response to I-54-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-54-4

Do not permit "industrial" recycling, or what ever the burning of materials is called. It harms our work in environmental justice and the least fortunate communities in our state.

Response to I-54-4

Comment rejected. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa) and 42060, and no change is necessary to the implementation of the Act. The comment neither identifies any particular process ("industrial recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider. To the extent CalRecycle can discern what the commenter means by "industrial recycling," no change is necessary or appropriate. The statute does not expressly forbid "industrial recycling," so the regulations cannot lawfully do so, either. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology.

Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. Finally, regarding "the burning of materials"—i.e., incineration—PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

I-58: Sandy Farley

Comment I-58-1

At a time when federal safety regulations are being weakened, California should be taking the lead in pressing for greater protections for our people [and our planet.]

Response to I-58-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

I-59: Lori Marra

Comment I-59-1

Please see attached comments related to the draft SB 54 regulations released on August 22, 2025. Fremont appreciates CalRecycle’s responsiveness to several concerns and recommendations that were raised by local government and other stakeholders after the May 2025 draft regulations were released. While we understand the need to finalize regulations given the regulatory restart, we believe there are still several areas in the draft regulations that do not fully align with the intent of SB54.

Please consider the following comments and suggestions to honor the intent to make producers/manufacturers responsible for all costs related to recycling plastic packaging after 2023 and make local governments whole for costs associated with the law’s implementation.

Thank you.

Response to I-59-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment I-59-2
Article 2: Covered Material and Covered Material Categories

Categorically Excluded Materials – 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging…."

Thank you for the revisions made in section 18980.2(a)(2) of the August 2025 (current) version of the draft regulations to clarify these exclusions only apply when "it is not reasonably possible to use other packaging or packaging components…" and requiring that entities must provide rationale to the Department, including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available.

We support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

The Department has stated this new categorical exclusion is intended to provide further clarity to statute section 42060(b) which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system, with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Recommendation:

We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB54 due to conflicting federal regulations. If CalRecycle determines that section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

• Exclusion vs. exemption rationale – Entities should be required to explain why an exemption under section 2.4 does not apply in their case, providing the statutory basis

to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for an exclusion vs. exemption and redirect requests to a more appropriate exemption pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):

"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, or guidelines, and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" (as shown above), as federal guidelines are not always statutorily compelling.

• Time limits – Packaging design and recyclability are shifting rapidly as a result of SB54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Fremont is also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6), and we oppose the regulatory change that exempts secondary and tertiary packaging of exempted and excluded primary packaging (18980(b)). We feel these changes go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to I-59-2

CalRecycle partially accepts and partially rejects this comment. CalRecycle rejects the commenter's suggestion to rely only on the exemption process set forth in section 18980.2.4. That suggestion would collapse Public Resources Code section 42060(b) concerning conflicts with federal laws and regulations into the exemption provision of section 42060(a)(3), effectively ignoring the directives of the former. Construing statute by ignoring specific parts of it is not a legitimate approach to statutory interpretation, and the commenter does not suggest that exemptions authorized under section 42060(a)(3) would adequately avoid the conflicts described in 42060(b).

CalRecycle also rejects the recommendation to remove the term "guidelines." The statute itself uses that term, and it uses it as an example of "a federal law or regulation," not a non-mandatory suggestion by federal government entities.

Nor is any revision to address time limits necessary. The proposed regulations place no limitation on when CalRecycle can scrutinize determinations that packaging is exempt due to conflicts with federal law. Therefore, contrary to the commenters assertion, there is a ready "pathway to integrate excluded material back into the law."

CalRecycle accepts this comment, however, to the extent it asserts that section 18980.2(a)(2) was unclear or potentially overbroad. See CalRecycle's response to comment I-19-1. CalRecycle also accepts this comment to the extent it was intended to assert that the term "guidelines" was unclear because it was not limited to mandatory guidelines. The proposed regulation has been revised to expressly state that it applies only to mandatory guidelines. Such an interpretation is logically necessary because it is not possible for a non-mandatory "guideline" to create a direct conflict with the Act; such a guideline imposes legal no obligation and therefore does not interfere with complying with the Act and federal laws and regulations simultaneously.

Regarding the exemption for over-the-counter drugs, CalRecycle rejects the commenter's suggestion for the reasons stated in response to comment O-49-1. Regarding secondary and tertiary packaging, CalRecycle rejects the commenter's objection because statute expressly includes both secondary and tertiary packaging within the definition of "packaging." See, also, CalRecycle's response to comment O-33-6. Moreover, the commenter appears to misread the clear meaning of 18980.2(b). The commenter asserts that that provision "exempts secondary and tertiary packaging of exempted and excluded primary packaging." That provision, however, only states that secondary and tertiary packaging is included in the types of packaging that may be "used for a good or used to contain a good." While that may affect the scope of packaging exempt from the law altogether because it contains one of the goods described in Public Resources Code section 42041(e)(2), it does not affect the scope of section 18980.2(a)(2) of the proposed regulations. That provision concerns the packaging itself and does not say that all packaging used for a particular good is excluded if any of the packaging used for that good is excluded. In every case, packaging is only excluded if it satisfies the requirements stated in section 18980.2(a)(2). See, also, CalRecycle's response to comment O-13-3.

Comment I-59-3

Article 3: Evaluations of Covered Material and Covered Material Categories

Eligibility for Being Labeled “Compostable” – 18980.3.3

AB 1201 prohibits materials from being labeled “compostable” unless they meet specific criteria, including the requirement to be “designed to be associated with the recovery of

desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC 42357(g)(E))

Section 18980.3.3(5) of the draft SB54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."

This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54 (if other criteria are met). The intent of section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. Section 18980.3.3(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. Further, while the SB54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable.

Recommendation:

We recommend deleting the following sentence from section 18980.3.3(5) of the draft regulations:

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

Response to I-59-3

Comment rejected. The commenter misdescribes the proposed regulation, which refers to labeling that causes users to discard an item with desirable organic waste, not labeling of the item itself as desirable organic waste. In other words, contrary to the commenter's assertion, the proposed regulation does not purport to consider material "desirable" based on how they are labeled. Rather, such circumstances are relevant to determining exactly what statute requires: whether the material is "designed to be associated with the recovery" of those "desirable"

materials. Moreover, as the commenter acknowledges, 18980.3.3(c)(5) states one criteria among many necessary criteria; it is not an independently sufficient one. Therefore, it cannot possibly create any "loophole" that would negate the other criteria. The only effect a necessary but not sufficient condition can have is to make the necessary criteria, as a whole, more restrictive; it cannot bring more circumstances into the range of those that satisfy the criteria. But the commenter's proposed change (deleting the second sentence of 18980.3.3(c)(5)) would not improve the restrictiveness of 18980.3.3(c)(5); it would only make it more uncertain and could even render it more inclusive because it would render 18980.3.3(c)(5) a mere recitation of Public Resources Code section 42357(g)(1)(E) instead of replacing the deleted text with a narrower interpretation of that provision. In other words, even if the commenter were correct that the proposed regulation interprets the statute too broadly, the proposed change would be inadequate to achieve the commenter's desired effect of more narrowly interpreting statute.

Comment I-59-4

Article 4 – Responsible End Markets

Alternative Recycling Technologies – 18980.4(d)

PRC section 42041(aa)(5) states that the SB54 regulations “shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall also include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.” However, section 18980.4(d)(B) in the current version of the draft regulations goes against this statutory direction and shifts the standard from the generation or production of hazardous waste to its management.

The draft regulations enable — not exclude — technologies that produce significant amounts of hazardous waste, unlawfully shifting the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and “presents an imminent and substantial risk of harm to public health or to the contamination of the environment” does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in “substantial compliance with an applicable permit” does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste.

Additionally, the regulations still fail to address the statutory requirement to encourage minimization of the “generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.” (The draft regulations currently only address hazardous waste generation/management.) We urge the

Department to add provisions to address these critical concerns and meet the statutory directives.

Response to I-59-4

CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

Comment I-59-5

Compostability of plastic – 18980.4(a)(4)(B)

We appreciate clarification of the use of the term “fully biologically decompose,” and reference to the ASTM D-6400 standard. We strongly support the Department’s requirements for items “partially or wholly comprising plastic.” Visible particles of compostable plastic in compost products hamper the marketability of those products. There is also a growing body of research showing the compostable microplastic residue has detrimental effects on plant and soil health, and potentially human health.

Compostability of paper and fiber – 18980.4(a)(4)(C) and 18980.3(c)(4)

We completely support the regulatory approach to have different compostability standards for paper and fiber than for plastic. However, with the requirement for testing from an independent laboratory in section 18980.3(c)(4) removed, we are concerned the new proposed compostability standards for paper and fiber may provide a perverse incentive for bad actors to maintain vague or otherwise insufficient documentation demonstrating that the fiber truly is “wholly derived from natural resources.” CalRecycle should require verification of or attestation that a product is wholly derived from natural resources to be submitted.

Response to I-59-5

Comment rejected. With regard to the "Compostability of plastic" portion of this comment, no substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

With regard to the "Compostability of paper and fiber" portion of this comment, comment rejected for the same reasons provided in response to comment O-68-6.

Comment I-59-6

Article 8 – Producer Responsibility Plan RequirementsProducer Responsibility Plan Requirements

Reimbursable costs – 18980.8(g)

We appreciate the addition to this section requiring that the PRO or Independent Producer “first” notify the local jurisdiction when costs are deemed covered for a recycling service provider. The notification of payments prior to issuance to service providers supports the transparency needed to help ensure producer payments are not being made for costs already included in solid waste rates.

Response to I-59-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-59-7

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Local jurisdiction requirement – 18980.11(b)

PRC section 42060.5 states “local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material” contained on the statewide recyclable / compostable list. The current draft of the regulations provides that a “covered material is considered included in a local jurisdiction or recycling service provider’s collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities.”

We believe that including the requirement to also transfer recyclable and compostable covered material goes beyond the statutory requirement for local jurisdictions. This framing also makes it difficult to attribute violations to the correct party. It must be clear where the enforceability for a violation of this requirement ends for the jurisdiction and the point at which that responsibility is transferred to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what’s expected for compliance and how compliance will be determined.

Recommendation: Delete “and transfers it to responsible end markets directly or to intermediate supply chain entities.”

Response to I-59-7

Comment rejected. The requested deletion would be inappropriate because it would suggest that local jurisdictions could, for any reason or no reason at all, dispose of materials in landfills and still be considered to comply with Public Resources Code section 42060, which requires local jurisdictions or their recycling service providers to include certain covered material in their collection and recycling program. Affording local jurisdictions and recycling service providers that discretion would render section 42060.5(a) wholly meaningless, and the Legislature could not reasonably have intended that outcome. Moreover, the commenter's concern over how compliance will be determined is unfounded.

As explain in response to comment I-66-1, there is no lack of clarity as to how to comply or ambiguity as to "where the enforceability for a violation of this requirement ends for the jurisdiction and the point at which that responsibility is transferred to a recycling service provider or an intermediate supply chain entity."

Comment I-59-8

Article 13: Enforcement Oversight by the Department

The draft regulations must recognize that SB54's Enforcement Authority is limited to producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes under AB 939. Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB1383, AB341, and AB1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB54 compliance by certifying whether they include the required recyclable or compostable covered materials in their programs.

We appreciate the CalRecycle team's openness to feedback and continued dialogue to ensure the final regulations will provide for successful implementation of the law.

Response to I-59-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation to, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local

jurisdiction or recycling service provider, not in compliance with the Act is subject to penalties pursuant to section 42081(a).

I-60: Abby Taylor-Silva

Comment I-60-1

On behalf of the signatory organizations (collectively referred to as “organizations”) listed below, we are submitting comments on CalRecycle's recently released draft regulatory language for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Together, our organizations represent companies that will potentially fall under this regulation's scope. The comments presented in this letter reflect the shared perspectives of the undersigned agricultural organizations and are submitted in response to your request for public input.

Response to I-60-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-60-2

ARTICLE 2: Covered Material and Covered Material Categories

Section 18980.2. Categorically Excluded Materials

We continue to support the categorical exclusions for food and agricultural products that fall under specific state and federal regulations, guidance, or standards. When providing food and agricultural products and their packaging to consumers, critical considerations include protecting human and environmental health through food safety practices and preventing the spread of pests and diseases. Additionally, food quality assurance, through packaging that protects food in transport, at the point of sale, and when handled by the consumer, plays an essential role in minimizing food waste.

Therefore, we support the draft proposal's Section 18980.2, which corresponds to the statutory authority (PRC, Section 42060 (8)(b)(2)) and provides clarity related to the definition of categorically excluded materials required to meet federal rules, guidance, or standards.

Section 18980.2.(a)(2)(A) Categorical Exclusion Reporting and Disclosures

We urge CalRecycle to carefully balance the need for consistent and transparent processes in determining categorical exclusions with the potential risks that publishing detailed lists of packaging information could pose. Such disclosures may inadvertently expose affected entities to harmful actions from the public or competitors, potentially damaging their business interests.

In Section (a)(2)(A), we propose the following language be added (suggested new language in italics) and the strikethrough language removed:

(A) The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, a *general description of* ~~the specification for~~ the packaging and the associated product(s), and the status of any review by the Department of such determination.

Encouraging Consistent Processes in Article 2

Article 2 identifies several product categories that may qualify for categorical exclusions or exemptions from this regulation, as detailed in the following sections:

- Section 18980.2. Categorically Excluded Materials
- Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware
- Section 18980.2.2. Exclusion of Certain Types of Packaging
- Section 18980.2.3. Exemptions for Specific Material with Demonstrated Recycling Rates
- Section 18980.2.4. Exemptions for Certain Covered Materials
- Section 18980.5.2. Exemptions for Small Producers

The categorical exclusion process for packaging required to meet federal rules, guidance, or standards is clearly defined, and we recommend no changes to Section 18980.2(a)(2) other than the language amendment mentioned above regarding what is posted to the website.

The exemptions related to small producers and covered material that present unique challenges; health and safety concerns; are unsafe to recycle; and specific material with demonstrated recycling rates all include application requirements and some indication of approval criteria.

However, the process of requesting an exclusion for certain types of packaging (e.g., long-term storage, de-minimis weight or volume) or reusable and refillable packaging and food service ware does not detail an approval process. The same is true for exclusions for devices, drugs, and packaging for medical products.

We encourage consistent process details to be included throughout the sections in Article 2 that at a minimum describe the following for each exclusion and exemption process, and clearly states that all exemption or exclusion requests are submitted to CalRecycle, which is also responsible for any qualification determinations:

- What is the process for notification and response regarding whether the application is sufficient?
- What is the timeline for response?

Response to I-60-2

Comment partially accepted and partially rejected. Regarding 18980.2(a)(2)(A), CalRecycle accepts the comment to the extent it suggested removal of the phrase "the specification for." CalRecycle declines to replace that phrase with "a general description of" because descriptions of packaging need to be specific enough (i.e., not "general") to clearly identify the packaging at issue. Instead, the revised regulations require notices to "specifically describe" the packaging at issue (see 18980.2(a)(2)(B)). CalRecycle makes that revision to provide greater clarity, not to address the commenter's concern regarding the alleged potential for the disclosure of packaging information resulting in "harmful actions from the public or competitors." As explained in response to comment I-63-7, such concerns are not legitimate bases for protecting information. The commenter's other proposal is for "consistent process details" for the exclusions and exemptions other than the one addressed in 18980.2(a)(2). However, the proposed regulations lay out the substantive elements of submissions, when required, and a regulation is not necessary for CalRecycle to implement notification practices as needed to fulfil regulatory requirements. Regarding timelines for responses, CalRecycle cannot reasonably predict the precise timeline required to process all submissions to it, and the statute and regulations provide ample ways to ensure that entities do not incur penalties when waiting for the processing of reasonable exemption requests. Corrective action plans and the factors set forth in Public Resources Code section 42081(c) ensure that producers will not face unjust penalties. CalRecycle accepts this comment, however, to the extent that the request for "process details" concerns exclusions under 18980.2(a)(2)(A). Significant procedural details have been added to 18980.2(a)(2)(A) through (F), providing clarity concerning how submissions are to be made, what they must contain, how and when CalRecycle will initially review them and provide a response, and special limitations on submissions concerning submissions for substantially similar packaging.

Comment I-60-3

ARTICLE 6: Requirements for the Producer Responsibility Organization Section

18980.6.4. Producer Responsibility Plan Amendments

This article outlines the approval process for producer responsibility plans, both for initial submission and updates. In both instances, the plan is reviewed by the advisory board and the public, with an opportunity for public comment.

However, when the PRO amends an existing plan, the article requires advisory board review but omits any mention of public comment, unlike the process for initial submissions and updates.

This discrepancy in process is problematic. Producers who could face substantial impacts from plan amendments, as well as other affected parties, must have the opportunity to submit comments before amendments take effect.

In Section (a) and (b), we propose the following language be added (suggested new language in italics) and the strikethrough language removed:

(a) If paragraph (1) of subdivision (e) of section 42051.2 of the Public Resources Code requires a PRO to submit a proposed plan amendment to the advisory board, the advisory board shall have no more than 60 calendar days to review the amendment and provide comments to the PRO. *Affected parties shall receive notice of the amendment and be afforded an opportunity to submit public comments during the same comment period.*

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

Response to I-60-3

CalRecycle rejects this comment. See the response to comment B-13-8.

Comment I-60-4

ARTICLE 13: Enforcement Oversight by the Department and Administrative Civil Penalties

Section 18980.13.2. Administrative Civil Penalties

The current draft regulation includes the following:

“Any entity, such as a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of the Act or this chapter, such participants shall not be exempt from penalties on the grounds that their noncompliance was caused by the PRO’s conduct.”

The statute creates a producer responsibility system where joining a PRO is the primary compliance pathway (PRC Section 42051(b)). Producers are effectively required to either join a PRO or become Independent Producers. By requiring PRO participation and then holding producers responsible for PRO failures, the draft regulation creates an untenable situation where producers must participate in a system but remain fully liable for its mistakes.

Once producers join a PRO, they have limited to no ability to control operational decisions, oversee implementation of the plan, prevent management failures, and monitor day-to-day compliance activities. Therefore, holding producers liable for conduct by the PRO violates basic principles of fairness and due process. This provision essentially discourages PRO participation because producers are laden with substantial risk and limited control. Additionally, there is no safe harbor for good faith participation in the PRO in the proposed regulation.

While this draft regulation conflates responsibility for a PROs violation, the statute clearly does not do so.

“Failure to comply with the requirements of this chapter, including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, **or** retailer to penalties for violations as set forth in this article or revocation of an approved plan. The department may conduct investigations, including by inspecting operations, facilities, and records of producers and PROs and by performing audits of producers and PROs, to determine whether entities are complying with the requirements of this chapter.” (PRC Section 42080(a))

Producers and the PRO should each be responsible for their own actions, and producers who comply with the PRO obligations, such as paying fees, providing accurate data, following PRO requirements, should not be held liable for any of these done on a reasonable basis and in good faith.

In Section (a), we propose the following language be added for clarity (suggested new language in italics) and the strikethrough language removed:

(a) Any entity, such as a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of the Act or this chapter, such participants shall not be ~~exempt from penalties on the grounds that~~ *held responsible if they are deemed* ~~their noncompliance was caused by~~ noncompliant due to the PRO’s conduct.

Response to I-60-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in PRC sections 42050, 42051, 42057, 42060, 42080, and 42081, and the recommended change is not necessary to the implementation or enforcement of the Act. Consistent with PRC sections 42080 and 42081 and sections 18980.13 and 18980.13.2 of the proposed regulations, and based on the considerations set forth in PRC section 42081(c), CalRecycle may initiate an enforcement action and impose penalties as appropriate against any party that, through its own distinct condition, action, or course of action constituting or resulting in a violation of a requirement, causes a violation of the Act. The language included in section 18980.13.2(a) of

the proposed regulations is intended to clarify that, while a PRO may act on behalf of its participating producers in complying with various requirements of the Act for which producers are primarily responsible (see, e.g., section 42051), such producers will not be exempt from penalties for violations of the Act for which they ultimately share a portion of the responsibility. Consistent with PRC section 42081(c), penalties will be imposed on a producer only to the extent the producer has caused or is responsible for the PRO's failure to comply with the requirements of the Act on its behalf. Moreover, to the extent this comment addresses principles of fairness and due process, in every instance, a penalized party will be afforded the opportunity to challenge the appropriateness of the applicable penalty through the administrative hearing process, as described in section 18980.13.4 of the proposed regulations. Therefore, no further change is necessary to ensure that a PRO and participant producers will be responsible for their own actions under the Act.

Comment I-60-5

ENSURE ALIGNMENT WITH STATUTE INTENT RELATED TO CURRENT EPR PROGRAMS

Avoid Conflict with Existing EPR Programs to Protect Valuable Asset and Resource

The statute clearly states that the PRO's plan shall include objective and measurable criteria to describe how the plan is "not in conflict with, disruptive of or adversely affecting the performance of the solid waste network providing services in accordance with local solid waste handling requirements and the intent described in Section 40004, and how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure" (PRC, Section 42051.1). The statute recognizes the valuable asset existing programs are to the state, and the importance of sustaining and expanding upon those.

The producers herein depend upon agricultural inputs for their operations. As such, we request CalRecycle and CAA recognize the unique success of existing EPR programs servicing agricultural input manufacturers in furthering recyclability and not implement duplicative regulatory obligations.

Thank you for your consideration of our comments, we look forward to your response. Please contact us if you have any questions.

Response to I-60-5

CalRecycle rejects this comment. The commenter accurately cites SB 54; however, the commenter raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. In particular, the commenter's request that "CalRecycle and CAA recognize the unique success of existing EPR programs" does not concern the regulations themselves, and, even if it did, the commenter does not identify any "existing

EPR programs," suggest how CalRecycle could "recognize" their successes, or identify which provisions of the proposed regulations it claims impose "duplicative regulatory obligations."

I-61: Matt Sutton

Comment I-61-1

The California Restaurant Association (CRA) is the definitive voice of the state's food service industry, representing nearly 22,000 eating establishments. Restaurants represent one of the most regulated employment sectors and regularly operate on razor thin profit margins. Given this, implementing new mandates in an already strict regulatory environment makes it challenging to mitigate negative impacts on these restaurant employers.

The Act requires California to fundamentally change its approach to managing the production and disposal of single-use packaging and plastic foodware by prioritizing waste reduction and moving to a circular economy that requires a reduction and recycling rate of 25% and 65% respectively by 2032.

Given the monumental task proposed under this regulatory scheme, we ask that CalRecycle, continue to take into consideration the burden of expanding mandates for restaurants within SB 54 and across local jurisdictions. Regulations in SB 54 must also ensure that recycling facilities are in place to reduce the costs to neighborhood restaurants that participate in the collection and of covered products.

The statewide restaurant community continues to suffer from some of the most inhospitable operating environments in the nation, and we must exercise extreme caution in adding on new mandates and direct costs to these neighborhood restaurant operators.

While key issues for restaurants are identified in the CalChamber coalition letter to you, this letter provides additional feedback, clarity and context:

Response to I-61-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-61-2

I. Ability for entities to reach agreement on who will report to CAA with respect to a given item.

Recommendation: Model language like Minnesota's EPR statute to help ease the burden on industry and allow businesses to comply with this law effectively.

In defining producers, Minnesota's statute, Minn. Stat. § 115A.1441, Subd. 26(a)(6), states that "[a] person is the producer of a covered material sold, offered for sale, or distributed in or into this state, as defined [in the preceding clauses], except: (i) where another person has mutually signed an agreement with a producer . . . that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material under this act. In the event that another person is assigned responsibility as the producer under this subdivision, the producer [under the preceding clauses] must provide written certification of that contractual agreement to the producer responsibility organization[.]"

This language allows for an entity identified as a producer to contractually assign that responsibility to any willing party, so long as that party (1) joins a registered PRO and (2) provides written certification of the contractual agreement to the PRO.

Not only will this allow businesses to comply with SB54 in a way that fits their individual business models, but it will cut down significantly on administrative burden to both CalRecycle and CAA in having to field questions and give guidance on every possible producer obligation scenario that might arise.

Additional Context:

We have encountered multiple instances where reasonable minds may differ as to whom the Obligated Producer should be under the law. (*Is the item "branded?" What if it is co-branded? Is the party a "licensee" of the brand?*) At some point the discussion must end to meet deadlines, and the parties necessarily come to a contractual agreement to settle the debate.

As written, the draft SB 54 regulations appear to allow for this, but as written, the reader must first cross-reference at least two statutes and sift through extremely long hierarchies for determining the producer of both food service ware and packaging.

With so much to parse through, the process of identifying who is or may be the obligated producer in California is rife with opportunity for multiple (and conflicting) interpretations.

Even though the law provides for a scenario where there are "multiple brands or trademarks that may be designated [as the producer]", proposed 14 CCR 18980.1.1(e)(5) states "the owners of brands or trademarks may agree among themselves to designate one of the brands or trademarks [as the producer], provided that the owner or a licensee of that brand or trademark satisfies the criteria to be the producer under this subdivision."

Even assuming all parties can agree on reaching this point in the "decision tree", it appears that the terms "owners of brands or trademarks" and "owner or a licensee of

that brand or trademark" are interchangeable, which muddies the waters on who may enter into such an agreement.

We do not believe California intends to prohibit contractual agreements on the topic – especially since the ability to enter into such an agreement clearly exists in some form as written.

As it stands, however, such agreements appear to be technically allowed, but the waters are so muddied that it will be nearly impossible for parties to come to any agreement – and certainly not without long and protracted negotiations. kri

Response to I-61-2

CalRecycle rejects this comment because it requests statutory changes, not changes to the proposed regulations. Even if the commenter intended to suggest that the regulatory text be modified to mirror the Minnesota statute quoted in the comment, CalRecycle rejects the comment because those changes would fundamentally alter the definition of "producer," which is set in statute and cannot be revised via regulation. The proposed regulations endeavor to permit, to the greatest extent possible, agreements to affect which person should be identified as the producer. However, the absolute right to do that would contradict the clear restrictions in Public Resources Code section 42041(w), which requires the producer to be the owner or licensee of a brand, and only if there is no such owner or licensee in the state can a person be a producer based on their sale or distribution of products. Lastly, to the extent the commenter intended to suggest that the proposed regulations do not make clear who may enter into the agreement described in section 18980.1.1(e)(5), CalRecycle rejects that suggestion because that provision is plain on its face. The commenter professes confusion over whether the terms "owners of brands or trademarks" and "owner or a licensee of that brand or trademark" are interchangeable. But 18980.1.1(e)(5) uses those terms for two clearly different purposes: The first term refers to the parties that can enter into an agreement as to which brand or trademark will be designated, and the latter ensures that there is a party that would qualify as the producer based on that designation. No language in 18980.1.1(e)(5) suggests that any party other than brand or trademark owners may enter into the agreement.

Comment I-61-3

II. Narrowing scope of Covered Materials to only those that enter the residential waste stream.

Recommendation: All packaging & food serviceware that is destined for the residential (including single- family and multi-family) sector should be included in EPR programs. Packaging and food serviceware disposed of at restaurants should NOT be in scope (aka dine-in deduction).

Colorado EPR law has language for this: "Packaging material" covered under the law explicitly does NOT include packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer.

To further this point, AB 827 requires restaurants/QSRs to provide front of house collection for compost, recycling & landfill. The industry manages and pays for this back-of-house packaging recovery, so commercial/Business to Business should be out of the scope.

California Restaurants are already subject to comprehensive recycling requirements including the collection of organics, plastics, and general waste. All commercial food service establishments that provide food for purchase and immediate consumption on site must comply with AB 827 that are easily accessible by a customer. These programs come at a great cost to operators for many that have been operating this program since 2020. Existing law already puts the responsibility on the operator to facilitate and pay for this collection and mandating additional recycling requirements is duplicative of existing efforts. Although we anticipate that the introduction of more recyclables will be available for consumption, we do anticipate that restaurants might see a reduction in their disposal costs but then see a possible increase in services for recycling and composting.

Response to I-61-3

Comment rejected. The proposed regulations do properly reflect the limitation that wraps and wrappers and bags designed or intended to be used by food service establishments are not "plastic single-use food service ware" under the law, but there is no statutory basis for the commenter's request for interpreting "covered material" generally not to include any packaging or food service ware disposed of at restaurants. The request cites only Colorado law and a California one unrelated to single-use packaging and food service ware.

Comment I-61-4

III. Providing a Viable 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.

Recommendation: Instead of facilitating those pathways, we see 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. 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.

Response to I-61-4

CalRecycle rejects this comment. See the response to comment O-91-8.

Comment I-61-5

IV. Request extension of upcoming reporting and fee deadlines based on timing of final regulations and presumably guidance/education coming subsequent to same.

Under these regulations, covered entities will be required to pay an initial payment of $5 billion over 10 years, with $500 million starting on March 1, 2027, to the California Plastic Pollution Mitigation Fund. Extended Producer Fees would start on July 1, 2027.

Additionally, members of the PRO and the community of Independent Producers are required to comply with annual reporting requirements for covered materials, including all source reduction baseline reports, starting on July 1, 2026.

For these reasons, we believe that CalRecyle should exercise its regulatory authority and encourage the Department to grant an extension to the start of collection for the proposed fund and Extended Producer fee timelines in alignment with future guidance from the Department towards the end of 2027.

Response to I-61-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053, 42060, and 42064, and no change is necessary to the implementation of the Act. PRC section 42053(b) provides that the PRO must charge its producers fees during the first two years of operation and during the preparation of the PRO plan, and PRC

section 42064(e)(1) provides that producers' annual environmental mitigation surcharge payments must commence in the 2027 calendar year. The proposed regulations providing for the payment of producers' fees, including section 18980.6.7, are consistent with these statutory requirements and timelines. Therefore, no change to the proposed regulations is necessary.

Comment I-61-6

Conclusion

We appreciate the opportunity to provide comments specific to our industry. We look forward to achieving the spirit of SB 54 through the collective efforts of stakeholders in the food industry as we work towards the shared goal of increased recycling rates for product packaging, while also being as delicate as possible with new costs and obligations for the statewide restaurant community.

Response to I-61-6

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

I-62: Anna Ferrera

Comment I-62-1

Dear Director Heller:

On behalf of Wine Institute, a public policy advocacy organization representing over 1,000 wineries and affiliated organizations in California, I appreciate the opportunity to provide comments on the draft final regulatory language to implement the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act), posted by CalRecycle on August 22, 2025.

The Act establishes an extended producer responsibility (EPR) program focused on reducing plastic but also impacts all product packaging in California, with certain exceptions, to meet a 100% recyclable or compostable goal for single use packaging and single use food service ware by 2032. SB 54 leaves much of the administration and guidance of the EPR program to the Professional Responsibility Organization (PRO), which is the Circular Action Alliance (CAA) selected by CalRecycle to administer the program.

Our winemakers create an agriculture-based product that has been manufactured and exported globally for generations. California is the fourth largest wine producer in the world. Our wine industry makes a significant contribution to the nation by providing quality jobs, bolstering economies through hospitality, taxes and tourism and enhancing communities through environmental stewardship and sustainable farming practices. In

California, wineries employ 422,000 people, paying $25.9 billion in wages annually, $7.9 billion in taxes annually, and generating $73 billion in economic activity in the state.

Last year, our wineries committed to a circular economy and began entering the California Beverage Container Recycling Program (Bottle Bill). Over 4,000 wineries registered and are moving forward to comply with recycling beverage containers in a significant step forward to further the state's recycling goals. New Bottle Bill program regulatory language per SB 1013 (Atkins, Chapter 610, Statutes of 2022), is now also moving forward this month.

California wineries are in the unique position of potentially entering two state programs focused on a circular economy, with recycling and source reduction goals, deadlines, and fees at a time when our industry is also grappling with the impacts of tariffs on wine export markets and sales, inflation and historically high production costs. This burdensome duplication raises costs, disrupts operations, and undermines the competitiveness of California wines and wine grape growers in both domestic and international markets.

Response to I-62-1

CalRecycle rejects this comment because it does not set forth any objection to the proposed regulations but rather acknowledges that certain businesses are subject to another statute in addition to those implemented by these regulations. To the extent the commenter meant to assert that the proposed regulations inappropriately interpret the statute, CalRecycle rejects that assertion for the reasons stated in response to comment O-91-5.

Comment I-62-2

Wine Institute requests that the SB 54 proposed program language revert to CalRecycle's previous interpretation to exclude secondary and tertiary packaging with CRV beverage containers in ARTICLE 2:

Exemption for Secondary and Tertiary Packaging for Wine Products
ARTICLE 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials

The current proposed final regulatory language considers CRV beverage containers excluded from the SB 54's EPR program. However, packaging that keeps these products safe and secure, is not. Secondary and tertiary packaging in commercial and industrial operations, according to the current language, are considered covered materials to be accounted for under the program. This was a change from the May 2025 version that excluded CRV beverage container packaging as well as the beverage containers.

SB 54 was enacted with exemptions and categorical exclusions that the Legislature placed in various parts of the statute such as food and agriculture and medical goods, along with CRV containers. Wine Institute aligns itself with CalChamber's comments

with regard to excluding CRV beverage container secondary and tertiary packaging, we agree specifically that:

- When the Legislature drafted SB 54 and specified what was *not* a "covered material", it *exempted* in PRC § 42041(e)(2)(A)-(G)) all of the packaging associated with that category, which the Department correctly assessed includes secondary and tertiary packaging associated with the primary regulated good.
- Legislature's recent expansion of the Bottle Bill to include wine and distilled spirits through SB 1013 (Atkins, 2022) was the product of years of debate over how best to handle the unique packaging streams associated with these industries. **Industry stakeholders agreed to participate because the CRV program would manage 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.
- Reading SB 54's beverage container exclusion narrowly would create direct conflict by forcing producers to comply with overlapping and inconsistent mandates under both the Bottle Bill and SB 54.
- When taken with the other exemptions in Public Resources Code section 42041(e)(2), the "beverage container" exclusion **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 "not covered material" category..

We strongly agree with CalChamber's analysis that "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." It is more likely that the Legislature intended the beverage container exclusion to cover the full packaging chain associated with CRV products and that a contrary reading would make the CRV provision the sole outlier in the section.

The term "beverage container" should be properly understood as the whole packaging system associated with CRV-regulated products, ***thereby preserving consistency in the exclusions section of SB 54****. It is contrary to the statute to now force wineries who voluntarily integrated into the Bottle Bill under SB 1013 with SB 54 compliance on secondary and tertiary packaging associated with the beverage containers.*

Recommendation: Cal Recycle's May 2025 draft regulation was correct in treating all tertiary and secondary packaging associated with CRV beverages as "not covered material." The current proposed final regulation should **revert to this interpretation and exclude secondary and tertiary packaging associated with the Bottle Bill in ARTICLE 2: Covered Material and Covered Material Categories Section 18980.2. Categorically Excluded Materials.**

Response to I-62-2

CalRecycle rejects this comment for the reasons stated in response to comment O-91-5. As explained in greater detail in that response, the contrasting wording of the so-called "statutory neighbors" supports the conclusion opposite the one advanced by the commenter.

Comment I-62-3

Other areas of significant concern by Wine Institute:

Uniqueness of Wine Product Packaging

SB 54 requires producers to meet certain source reduction deadlines for packaging, but the **primary packaging for wine is often purchased and used to contain products a year or two or more in advance of sale.** That may make it difficult to determine source reduction or use of recyclable materials over time.

Recommendation: Wine Institute would appreciate language that takes into account the unique packaging processes that occur with wine products.

Response to I-62-3

Comment rejected. No change to the proposed regulations is necessary to accommodate the concern over source reduction determinations because packaging that has not yet been sold, distributed, or discarded (and thus counted as "offered for sale," as described in section 18980.1(a)(17)(G)) is not assessed for purposes of source reduction. Regarding challenges specific to wine packaging for meeting the recyclability requirement, Public Resources code section 42060(a)(3) provides relief for "unique challenges" and is addressed in section 18980.2.4 of the proposed regulations, so no revisions in response to this comment are necessary.

Comment I-62-4

Producer Compliance - ARTICLE 5: Requirements for Producers Section 18980.5.

“(b) Pursuant to subdivision (b) of section 42051 of the Public Resources Code, each producer shall, within 30 days after the effective date of this chapter, apply to become a participant of an approved PRO or apply to be an Independent Producer subject to the requirements of section 18980.5.1.”

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

We agree with the comments of the Agricultural Coalition that CalRecycle and the PRO should allow for a good faith phase-in plan for the submission of 2023 data upon initial registration to the PRO. Requiring complete data for 2023 could be problematic as the

types of data may or may not have existed during this timeframe. Allowing producers to provide available data with a gradual phase-in process over subsequent years will incentivize more participation into the registration process and would be a more realistic, workable solution for producers.

Recommendation: Given the delay in promulgating the proposed final SB 54 EPR language, Wine Institute is concerned that the timing requirements in 18980.5 (d) are unrealistic for producers/participants pursuant to subdivision (b) of that section. Producers should be given an appropriate amount of time to gather and submit their supply data for calendar year 2023 rather than needing to supply that data at the time of application.

Response to I-62-4

CalRecycle rejects this comment as a uniform requirement and timeline for submitting supply data for the calendar year 2023 for each producer that applies to become a participant of an approved PRO is necessary to ensure that a PRO receives all relevant data as soon as possible to ensure its compliance with the Act, including those under section 42057 of the PRC, and section 18980.9 of the proposed regulations. This requirement and timeline are also necessary to ensure the PRO can review all relevant information prior to its decision to approve a producer to become a participant in its plan. The commenter's concern that this requirement hypothetically "could be" problematic as the types of data may or may not have existed during this timeframe" is outweighed by the need to ensure that a PRO has all relevant data to ensure compliance with the Act as described above. Further, CalRecycle also rejects this comment as the commenter does not articulate with specificity any undue burden or alternative timeline that would be universally applicable to all producers balancing the aforementioned PRO requirements for the data which is further clarified in section 18980.10.2 of the proposed regulations.

Comment I-62-5

“Exemptions” require EPR program registration and fees
Exemptions for Materials with Documented High Recycling Rates, Unique Challenges, and Small Producers from the EPR packaging program must still register and pay fees.

-Materials with Documented High Recycling Rates: **Exemptions for Specific Material with Demonstrated Recycling Rates** - Section 18980.2.3. Specific packaging or food service ware collected through established alternative programs (outside of standard curbside collection) and consistently achieving high recycling rates (e.g., 65% for 2024-2026, 70% thereafter) may be eligible for an exemption.

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

-Unique Challenges: Exemptions for Certain Covered Materials – Section 18980.2.4. **Only a PRO may present and justify these cases that allow for an exemption** and must clearly and convincingly establish that compliance with the Act is impractical due to challenges unique to the covered material or related circumstances.

-Small Producers: Section 18980.5.2.: Producers with gross sales within California under $1 million in the most recent calendar year may apply for an exemption. The application is subject to approval and “applicants” **must register as producers** before they are considered exempt.

These fees and accounting obligations will surely add to the costs of our products to consumers.

Recommendation: Entities exempted under the program should not be required to register as a producer, pay fees, or be subject to enforcement penalties. They are exempt. These entities could be allowed to simply self-certify and then be exempted entirely from the program.

Response to I-62-5

Comment rejected. Allowing entities to "simply self-certify" and then have no obligations whatsoever under the law would result in an enormous loophole and risk the failure of the program established under the statute entirely.

Regarding section 18980.2.3, producer registration is required because CalRecycle otherwise could not reasonably enforce the requirements of Public Resources Code section 42041(e)(2)(H). That provision's use of the term "producer" reflects that reality. However, the commenter is incorrect that such entities are subject to the same fees and "enforcement penalties" as producers generally. The packaging and food service ware at issue would, by definition, not be "covered material."

The same analysis applies to the exemption for "small producers" under section 18980.5.2. They are still "producers" but are excused from the obligations, including those that apply to fees that producers participating in PRO plans must pay, that apply to producers with respect to covered material of which they otherwise would be producers. But, without any registration requirement, CalRecycle could not implement the exemption.

Regarding section 18980.2.4, there Legislature's word choice makes clear that there is no exemption for producers, nor are the "exempted" materials considered no longer "covered material." Section 42060(a)(3)(A) unambiguously states that "covered material" is exempt, so the covered material itself need not meet any requirements of the law, but that provision provides no relief to the producers, nor does it require any materials to be no longer considered "covered material." Under any other interpretation, the granting of exemptions would significantly undermine the statute's purpose; each granted exemption would result in more covered material disposed of in landfills, less funding for local jurisdictions' collection and recycling programs for handling covered material, more covered material depressing plastic recycling rates, and greater likelihood

that covered material would fail to meet the statutory requirements to be considered recyclable. Moreover, if exemptions under section 42060(a)(3)(A) carried that risk, CalRecycle would be unable to grant nearly as many exemptions as it might under the current interpretation, severely undercutting apparent purpose of the commenter's request.

Comment I-62-6

Scarcity of Materials with High Recycling Rates

Wineries are seeking these high recycling rate materials but often they are scarce or simply not available.

- Will there be an investment in developing these materials from EPR funds?
- What will be the recourse if entities cannot meet the goals due to scarcity of product?

Response to I-62-6

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. To the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required.

Comment I-62-7

List of De Minimus Material Exclusion - Section 18980.2.2.(b)(ii) and (2)(C) Exclusion of Certain Types of Packaging

This section may exclude labels, adhesives, and other small components of wine bottles or boxes that wineries will need to have more clarity on such as corks and capsules.

PRO may designate components as de minimus:
"(3) The PRO or an Independent Producer may request that the Department deem certain components or groups of components to be of de minimis weight or volume."

CalRecycle must publish a list of such de minimus components:
"(4) The Department **shall publish on its website a list of its components and groups of components**, whether proposed in requests submitted pursuant to paragraph (3), alleged to be of de minimis weight or volume in response to a notice of violation, or otherwise identified by the Department, **that it has determined to be of de minimis weight or volume."**

Wine corks, capsules or other small components may be considered de minimus.

<u>Recommendation: We request that CalRecycle and CAA allow postponement of this data collection until final decisions on de minimis exclusions are made to avoid collection of data that will not be needed for future reporting.</u>

Response to I-62-7

Comment rejected. The commenter refers to "data collection" without explanation. If the commenter intended to suggest that certain components can be disregarded until initial determinations concerning application of the de minimis exclusion are made, CalRecycle declines to do so. First, it is not reasonably possible to identify which components should effectively be granted an exclusion before the exclusion can actually be applied using reported information. While the commenter describes components that it be treated in that manner, no method is presented for how that determination could be made generally, and the components identified may, in any event, be parts of beverage containers and therefore are not covered material (see Public Resources Code section 42041(e)(2)(E)). Also, the expected timing of the effectiveness of the proposed regulations relative to the likely approval of any producer responsibility plan allows sufficient time for information to be available concerning what components will initially be considered de minimis, but there is no date certain by which CalRecycle can reliably predict when that will occur. Lastly, no determinations concerning the de minimis exclusion will be "final decisions," as they will be subject to reevaluation.

Comment I-62-8

Registration Deadlines in Statute vs. those set by the PRO - ARTICLE 5: Requirements for Producers - Section 18980.5. Producer Compliance

SB 54 statute states that producers must register within 30 days of the official enactment of the regulations or upon becoming a producer (for entities established before January 1, 2027), or within six months for those becoming producers on or after that date.

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

SB 54 requires that the PRO deliver a detailed report outlining plastic covered material data from the 2023 calendar year to CalRecycle by July 1, 2026. The program must be fully operational by January 1, 2027.

CAA set a deadline of September 5, 2025, for producer registration and posted this on their website. This is not in statute, however, and proposed regulatory language is not final.

Recommendation: Both of these deadlines, given the delay and Governor’s request for the re-review of these proposed regulations, appear unrealistic and more time should be provided in order for participants to gather and submit accurate information.

Response to I-62-8

CalRecycle rejects this comment for the reasons stated in I-62-4. Further, CalRecycle also rejects the portion of the comment regarding CAA setting a deadline for producer registration as this is outside the scope of CalRecycle's current statutory authority as well as the proposed regulations.

Comment I-62-9

Penalties for Non-Compliance by PRO - Section 18980.13.2
Participants may be penalized if actions taken by PRO on their behalf causes their noncompliance.

"Any entity, such as a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of the Act or this chapter, such participants shall not be exempt from penalties on the grounds that their noncompliance was caused by the PRO's conduct ."

- What is the legal basis for this language that may cause a participant (who must rely on a PRO's submissions and program compliance) to be penalized by CalRecycle for a PRO's actions/non-compliance?

Recommendation: This section should be reconsidered.

Early Fees - Section 18980.6.7.(a)
Relevant Language: Prior to approval of an initial plan and for the two years following that approval, a PRO shall charge all participant producers a fee based on specific items set forth in subdivision (b) of section 42053 of the Public Resources Code including estimated costs of implementing the plan, the needs assessment, and reimbursement to CalRecycle for administration, implementation, and enforcement.

The PRO/CAA requested and collected input only from those that had already registered as producers regarding their proposed calculation for early fees. For those who do not yet know their status as producers - input on early fees was not considered.

Recommendation: Regulations should be approved and promulgated so that all potential participants may provide input on early fees.

Response to I-62-9

CalRecycle rejects this comment. To the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required. To the extent this comment recommends reconsideration of section 18980.13.2(a), see the response to comment I-60-4. To the extent this comment

recommends the approval and promulgation of the proposed regulations so that potential participants may provide input on fees under section 18980.6.7(a) of the proposed regulations, CalRecycle is currently following the rulemaking process to adopt the proposed regulations, including by complying with all necessary timeframes and opportunities for public participation. The commenter is welcome to contact the producer responsibility organization directly if it would like to provide input on the assignment of fees under section 18980.6.7(a) prior to the adoption of regulations.

Comment I-62-10

Governance by PRO

Wine Institute highlights our general concern about the unique governance structure and authority CalRecycle grants to the PRO under this packaging EPR program and potential for anti-competitive behavior. We strongly believe that CalRecycle must exercise extraordinary and consistent oversight and transparency in this matter and provide a process for stakeholders to provide timely and direct input to the Department on PRO actions/decisions.

Response to I-62-10

Comment rejected. The comment does not address any particular provision in the proposed regulations and only generally asserts discomfort with the EPR model.

Comment I-62-11

Food Safety

We appreciate that the new draft recognizes the statutory language in SB 54 requiring that the implementation of the program that does not create conflicts with food safety and other requirements under Federal law and guidelines. Will ensure that California's food supply chain is adequately protected, minimizes organic waste and remains affordable..

We agree with the comments of the Agriculture Coalition that enhancing recycling and achieving circularity cannot and should not expose Californians to increased risks jeopardizing food safety or adding to food waste and higher prices.

Response to I-62-11

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

I-63: Emily Rooney

Comment I-63-1

On behalf of the undersigned organizations, we submit these comments regarding CalReycle's recent draft regulatory text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Collectively, we represent a broad coalition of food and agricultural associations, whose members may be subject to this regulation. We thank CalRecycle for their continued work to address concerns regarding affordability and costs associated with compliance with SB 54, however, we continue to remain concerned about overall implementation of the regulation. We look forward to working with you throughout this process.

Response to I-63-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-63-2

Section 18980.1(a)(17)(B). Definition of "Product that Uses Covered Materials"

We support CalRecycle's recent addition in this section highlighting that empty packaging materials are not considered single use plastic or covered materials for the purposes of this regulation. Empty packaging may or may not enter the commerce stream in the state of California and therefore should not be considered under compliance until it is purchased, filled and sold, by the producer for the user or consumer, into the supply chain in California.

Response to I-63-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment I-63-3

Section 18980.1.1. Producer Identification

In Section (c), we propose the following language be added for clarity (suggested new language in italics):

"(c) For covered material other than food service ware *and those identified in section 42041(e)(2) and (w)(4) of the Public Resources Code,* the producer shall be determined in accordance with this subdivision."

Response to I-63-3

Comment rejected. The proposed additional language would be superfluous and would incorrectly state that the packaging described in Public Resources Code section 42041(e)(2) is "covered material."

Comment I-63-4

ARTICLE 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials

The coalition remains supportive of the categorical exclusions for food and agriculture products that are under certain state and federal guidance or regulations. Issues such as protecting human and environmental health through food safety practices, and the prevention of the spread of pests and diseases are paramount when providing food and agricultural products (and their packaging) for consumers.

In Section 18980.2(2)(A), we propose the following language be added for clarity and specificity (suggested new language in italics):

Any entity that has determined that packaging is not covered material pursuant to paragraph (2) of subdivision (a) shall notify the Department and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination. The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal *and/or state* regulations, rules, or guidelines, *applicable to food and agriculture* and explain why no reasonably possible alternative packaging or packaging component is available. The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, the specification for the packaging and the associated product(s), and the status of any review by the Department of such determination.

At this time, there are not economically viable alternatives available to plastic packaging for many food and agricultural products throughout the supply chain and pursuing a change in the packaging will result in an increase in food prices and food waste. Some commodities are cooked or pasteurized within the package to properly sterilize the food and reduce the chances of contamination and spread of food borne illnesses. This method keeps the product and inside of the package completely pristine and shelf-stable until the package is opened.

Pursuing a change in packaging is a multi-step process that involves identification of materials and testing of the prototype for biological and structural stability. For shelf-stable foods, the testing spans twelve months at minimum. The food used for the testing process must be discarded. It is routine protocol that products that are in the experimental process for packaging testing and validation cannot be sold for human or animal consumption therefore resulting in excessive food waste.

Packaging changes could also require new machinery upgrades and/or entirely new equipment, since packaging lines are specifically designed by material type and package size. If new machinery must be purchased, a single food processing machine can cost $30 million to $100 million. In many cases, these costs are unsustainable for agricultural businesses and will lead to business closure or relocation out of the state. In rare cases, where an agricultural business can sustain this cost increase it will be

passed through the supply chain to the consumer. None of this includes the actual costs into research and development for new packaging or the costs for implementing the regulation.

In an effort to transition to other packaging alternatives, millions of dollars will be spent throughout the food supply chain, increasing food prices, and generating excessive food waste. For these reasons and many others, it is critical that CalRecycle maintain a workable “Categorical Exclusion,” that provides an option for potential producers that do not have a “reasonable” alternative to prevent negative impacts to the food and agricultural supply.

Response to I-63-4

Comment partially rejected and partially accepted. CalRecycle rejects the specific changes the commenter suggests. The only proposed change is the addition of the phrases "and/or state" and "applicable to food and agriculture." Referring to state regulations is improper because the statutory provision (Public Resources Code section 42060(b)) implemented in the proposed regulation at issue does not concern any state law. To the extent state law presents compliance challenges, exemptions under Public Resources Code section 42060(a)(3) (which also allow phase-in plans) and (a)(4) are adequate to address the commenter's concerns. Regarding the second proposed phrase, CalRecycle declines to add it because it would be redundant. The proposed regulation at issue expressly only concerns food and agricultural commodities.

CalRecycle accepts this comment, however, to the extent it asserts that section 18980.2(a)(2) was unclear or potentially overbroad. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment I-63-5

Section 18980.2(a)(2)(A). Categorical Exclusion Reporting and Disclosures

Our coalition is concerned about Section 18980.2.(a)(2)(A) and its requirement of CalRecycle to publish, on a publicly available electronic database, the entity name and product specifications, of producers seeking exclusions based on conflicting regulations. While CalRecycle is mandated to withhold from the public information that may be identified as a trade secret, this is not sufficient assurance that information about producer products will not be released to the public and potential competitors. It is highly likely these entities could become a target for litigation or public shaming. Entities should not be exposed to targeting by the public or competitors for determining a product falls within the categorical exclusion for any reason.

In Section 18980.2(a)(2)(A), we propose the following language be added for clarity (proposed additions in italics and deletions in bold strikethrough):

“(A) The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, *a general description of* ~~**the specification for**~~ the packaging and the associated product(s), and the status of any review by the Department of such determination

Response to I-63-5

CalRecycle partially accepts and partially rejects this comment as described in CalRecycle's response to comments I-60-2 which contains the same recommendation. See, also, CalRecycle's response to comment I-63-7 regarding "litigation or public shaming."

Comment I-63-6

Section 18980.2.(a)(2)(B). Determination of Non-Qualification

The coalition supports CalRecycle’s overall approach to enforcement including engaging state agencies such as the California Department of Food and Agriculture (CDFA) and California Department of Public Health (CDPH) throughout the process. However, it is likely that entities that are found out of compliance for packaging or components may not be able to ensure compliance within 180 days. If there are further requirements to transition safely to alternative compliance options such as additional research or machinery replacement, this can take much longer than the allotted 180 days. We urge CalRecycle to consider alternative compliance pathways for businesses working in a good faith effort to transition out of plastic packaging.

Response to I-63-6

Comment partially rejected and partially accepted. CalRecycle rejects the comments general objection to the 180-day period established in the proposed regulation, as explained in response to comment O-64-3[AB46.1][DZ46.2]. Moreover, the regulations ameliorate the commenter's concern regarding 180 days by requiring notice from the Department that packaging may not be eligible for the exclusion addressed in section 18980.2(a)(2) at least 120 days before that 180-day period can begin. Lastly, the commenter offers only the vague suggestion that CalRecycle "consider alternative compliance pathways for businesses working in a good faith effort to transition out of plastic packaging." The statute and the proposed regulations already address such pathways via exemptions under Public Resources Code section 42060(a)(3) (which expressly authorizes phase-in plans) and (4) and corrective action plans under section 42081(b) (which allow avoidance of penalties while a producer resolves compliance problems).

CalRecycle accepts this comment, however, to the extent it suggests that the proposed regulations should reduce the potential for businesses to have to change their packaging within 180 days of a Department determination to begin with. The regulation has been revised to more clearly establish a process to prevent unmeritorious claims from being added to the database described in the

regulation (in new subparagraph (D)), thereby reducing the likelihood the a business will rely on such claims only to have the Department deem the claim improper and thus subject to the 180-day period.

Comment I-63-7

Sections 18980.2.2. Exclusion for Certain Types of Packaging

For the purposes of this section, CalRecycle determines that packaging used for the storage of certain products over five years is not considered covered materials. We recommend changing this threshold to one year for consistency with reporting to the Producer Responsibility Organization (PRO). This one change could create more consistency and efficiency within the reporting and compliance process.

Regarding public disclosures of de minimis, we hold the same concerns as the previous section requiring disclosures in Section 18980.2.(a)(2)(A) Categorical Exclusion Reporting and Disclosures. The coalition is concerned that public disclosures will expose the business community to legal actions and other nuisance issues.

Response to I-63-7

Comment rejected. The commenter refers to a "threshold" and requests that it be changed to one year, an apparent reference to the five-year maximum period for how frequently CalRecycle will reconsider its applications of the statutory de minimis provision. CalRecycle declines to make that change because a period of just one year is insufficient for producers to have the certainty necessary for it to rely on the exclusion in the first place. The commenter's assertion that CalRecycle reconsidering its determinations as frequently as one year "could create more consistency and efficiency" contradicts this commonsense accommodation of producers' reasonable operational needs. Regarding the potential for "legal actions and other nuisance issues" and "litigation or public shaming" (the phrase used in comment I-63-5, to which this comment refers) based on disclosure of information to the public, CalRecycle rejects that basis for not requiring disclosures. The proposed regulations incorporate the basic legal protections for trade secrets under the Public Records Act. No support is given for why those protections are "not sufficient," and the risk of "litigation or public shaming" is not sufficient to render information a trade secret. The Legislature decided that basic information regarding the characteristics of packaging must be disclosed to CalRecycle, and nothing in the statute or otherwise suggests that the protections of the Public Records Act for legitimate trade secrets (i.e., information that derives value from its secrecy and is reasonably maintained as a secret) are weaker than in other contexts in which they apply. If the commenter's assertion that public disclosure of information would subject it to harm, then such information is likely to constitute legitimate secrets protected under trade secret law. To the extent that information may subject businesses to legal actions or "nuisance issues' if released, such a risk is an ordinary risk of conducting business, not a circumstance that, by itself, renders the information a trade secret, and it is incumbent upon those choosing to do business in California to adjust its practices to comply with applicable law.

Comment I-63-8

Section 18980.2.4. Exemptions for Certain Covered Materials

This coalition appreciates the Department's recognition of the need for exemptions of certain covered materials. However, we remain concerned about the language contained in the updated draft regulatory text suggesting exemptions last for only two years. The draft language and rulemaking processes have not substantiated any reason for this deadline which suggests a lack of specific reasoning for the two-year period. In most cases, two years will not allow sufficient time to develop alternative packaging, given the length of time to identify and test new packaging materials and subsequently obtain and install new packaging equipment. No covered material category is the same and may require reconsideration at different intervals. Thus, we strongly recommend exemption timelines be considered on a case-by-case basis that evaluates the compliance challenges with products in the exempted covered material category.

Additionally, the coalition believes that if certain packaging types are exempt, they should not be required to pay fees. By determining that a certain package is exempt, the PRO is concluding that it is necessary in some capacity and therefore it should not be subject to any of the regulatory costs associated with this process.

Response to I-63-8

Comment rejected. The commenters' concern over the two-year period is unfounded. As the commenters' themselves concede—"two years will not allow sufficient time," but only in "most cases," not all—there likely will be some cases where that period is sufficient time. And, when that period is not sufficient, section 18980.2.4(h) avoids unnecessary burden by establishing a streamlined process for extending the exemption period. Moreover, section 18980.2.4(g) provides that CalRecycle will grant extensions for up to five years when it determines the circumstances justify such a duration. These provisions generously accommodate the commenters' concerns over the duration of exemptions.

Regarding the proposal that producers should not be required to pay fees related to packaging types that are exempt, CalRecycle rejects that proposal for three reasons. First, the statute unambiguously provides that exemptions do not render packaging no longer "covered material," and that the exemptions apply to compliance by the covered material themselves, not producers' obligations with respect to their covered materials. Second, packaging that is exempt contributes to the end-of-life management costs and other impacts of waste from single-use materials just as non-exempt covered materials do. In fact, their effects are actually greater because, by definition, they cannot be recycled or composted but may still fall into a covered material category that qualifies as recyclable or compostable and thus must be collected by local jurisdictions and recycling service providers. Excusing producers from their share of responsibility over the end-of-life management of those materials is directly counter to the purpose of the statute, as they would effectively shift all their responsibility for paying for the management of covered materials onto local jurisdictions, recycling service

providers, and other producers. Third, and relatedly, if those responsible for putting exempt materials into the marketplace (and thus, eventually, into the waste stream) are excused from paying for the impacts of those materials, the strain on program funding would militate against granting any exemptions to begin with.

Comment I-63-9

Section 18980.2.4. (4)(f)(2)(D): Alternative Phase-in Plans

The coalition supports allowing CalRecycle to approve alternative phase-in plans for businesses that require additional time to transition to compliance. This allows for greater flexibility for the regulated entity and CalRecycle to come to mutually agreeable, workable solutions in a timeframe that works for all parties involved.

Response to I-63-9

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment I-63-10

Section 18980.2.5. Covered Material Category List Updates

Additional clarity is still needed with regards to the timeline in which the Department can receive and review new information for updates to the Covered Material Category (CMC) List as outlined in the revisions in Section 18980.2.5 (a) and (b).

Specifically, Section 18980.2.5(a) dictates conflicting timelines and procedures for the department to follow in updating the CMC List. Furthermore, this section does not recognize the need for regular updates throughout the calendar year to address the needs of businesses in making purchasing decisions. We urge CalRecycle to update the CMC List on a quarterly basis to accommodate updated recycling data and purchasing decisions to ensure the proper management of covered materials at the start and end of their useful life.

To provide more clarity for the Department and producers we suggest the following streamlined updates to Section 1890.2.5(a) (proposed additions in italics and deletions in bold strikethrough):

“18980.2.5 “(a) The Department shall review and, if necessary, update the CMC list *quarterly to make relevant changes* ~~**within the applicable timeframe specified by**~~ *in accordance with* subdivisions (e) or (f) of sections 42061 ~~**or subdivision (a) of sections 42092**~~ of the Public Resources Code.”

The current rate of CMC List updates has already fallen short of providing the needed clarification for producers, end-markets, and municipal sorting centers.

These recommended changes to the draft regulatory text recognize the need for more consistent updates to the CMC List. As covered materials change as a result of the Act,

annual updates will fall short of what producers, suppliers, and end-use markets need to make management and planning decisions to remain compliant and achieve the highest rate of recyclability.

Response to I-63-10

CalRecycle rejects the comment. Subdivisions (e) and (f) of sections 42061 of the PRC and subdivision (a) of sections 42082 of the PRC have their own subject matter and a requirement for an update related to that subject matter. Ignoring the requirements of sections 42082 of the PRC is inappropriate. The process set forth by regulation to review and, if necessary, update the list is completely consonant with the requirement to update the list "at least" within or "no less than" particular timeframes and no change is required. CalRecycle also rejects the suggestion that the list be reviewed and updated quarterly. A commitment to quarterly review would significantly truncate the time needed to obtain longitudinal information and to analyze that information. The regulations do not restrict CalRecycle from revising the CMC list more frequently than the statutory minimum when appropriate for the circumstances, and thus no change is required.

Comment I-63-11

Section 18980.2.6.(a). Covered Material Category List Recommendations

We urge CalRecycle to combine aseptic cartons (Category ID PF15P) and gable-top cartons (Category ID PF5P) into a single CMC.

Gable-top and aseptic cartons are widely recognized and managed within the recycling industry under a single material category (including in the EPR systems in Oregon and Colorado and on the draft list in Maine). These cartons are baled, marketed, and sold together at Material Recovery Facilities (MRFs) in California and across the country. The industry does not differentiate between gable-top and aseptic cartons when preparing bales for end markets. In fact, Recycled Materials Association's (formerly ISRI) specifications for the Grade 52 bale, keeps gable top and aseptic cartons together. The U.S. EPA, in its waste characterization studies, also keeps aseptic and gable-top cartons together in the same category. This practice reflects the reality of the recycling industry, where both types of cartons are processed and marketed together.

CalRecycle's SB 343 MCS Report issued in April 2025 found that the difference in acceptance in recycling programs between the two types of cartons is negligible and programs that stated in the past that they manage them differently in all likelihood no longer do (i.e., any implication that they are collected, sorted, or marketed separately from each other is based on outdated information). Additionally, the MCS Report found that large volume transfer and processing facilities (LVTPFs) sort both types of cartons at the same percentage for recycling and into the same output stream.

Maintaining this unnecessary distinction between the two types of cartons increases the cost to California consumers, the PRO, and CalRecycle by requiring additional

composition study sorting, additional data collection, calculation of two instead of one recycling rates, and separate cost allocation to each carton type.

We urge CalRecycle to align with industry wide recycling practices and group aseptic and gable-top cartons together into a single Covered Material Category.

Response to I-63-11

Comment rejected. The comment does not recommend a change to the proposed regulations or raise an objection to the procedures followed by CalRecycle in the rulemaking process. Rather, the comment urges changes to a study published by CalRecycle. Accordingly, no response is required.
To the extent the commenter intended to urge changes to the covered material categories list published by CalRecycle pursuant to Public Resources Code section 42061, that suggestion also concerns a publication separate from these proposed regulations, not the proposed regulations themselves.

Comment I-63-12

ARTICLE 3: Evaluations of Covered Material and Covered Material Categories Section 18980.3.4. Independent Third-Party Validation of Postconsumer Recycled Content
Shifting packaging away from plastic will require substantial effort and resources. Requirements of the act should be inclusive of all alternatives to plastics. Agricultural waste is a well-established waste stream with multiple alternative uses for its byproducts. Many are used in packaging or container components already. To accommodate for the use of agricultural byproducts in alternative packaging we recommend the following language be included in the Act.

In Section 18980.3.4(a)., we propose the following language be added (proposed additions in italics):
“(a) A PRO shall not apply the source reduction credit based on incorporation of postconsumer recycled content *or substitution of virgin petroleum-based plastic with plant agricultural waste,* as described in section 42057(a)(2)(B)(i) of the Public Resources Code, unless the alternative compliance formula described for doing so has been proposed and approved as part of a PRO’s plan in accordance with this section.”

Response to I-63-12

Comment rejected. The suggested addition is nonsensical because it would state that "substitution of virgin petroleum-based plastic with plant agricultural waste" is one of the bases for the source reduction credit permitted under Public Resources Code section 42057(a)(2)(B)(i). The only basis permitted by that statutory provision is the incorporation of postconsumer recycled content. To the extent the commenter intended to propose that CalRecycle expand the statute so that agricultural waste could be used in the alternative compliance formula described in section 42357(a)(2)(B)(i), CalRecycle rejects that proposal because such a change can only be made through legislation.

Comment I-63-13

ARTICLE 5: Requirements for Producers
Section 18980.5. Producer Compliance

We continue to urge flexibility for producers in registering with the PRO for the first time, then what is required in subsection (a) and (d) of Section 1890.5. This regulation is extremely complex and may be unclear for certain entities that may or may not be producers as required by the Act. Requiring producers to register with a PRO 30 days after the publishing of the Act may not leave enough time for an entity to fully understand how the requirements apply to their operation. This would result in a burdensome submission of data to the PRO and Department that would be unnecessary. This is especially concerning as it requires sensitive data be submitted by private companies to the PRO which is operated by a non-governmental agency.

The Department should provide additional resources and technical assistance for California businesses to determine whether they must comply with the Act. Additionally, the PRO should be granted more flexibility to onboard new producers at a cadence workable for both the PRO and potential producer to ensure accuracy in submitted data.

Due to the uniqueness of this regulation, we recommend CalRecycle and the PRO allow for a good faith phase-in plan for the submission of 2023 data upon initial registration to the PRO. Requiring complete data for 2023 could be problematic as the types of data may or may not have existed during this timeframe. Allowing producers to provide available data with a gradual phase-in process over subsequent years will incentivize more participation into the registration process and would be a more realistic, workable solution for producers.

Response to I-63-13

CalRecycle rejects this comment for the reasons as stated in I-62-4 and I-62-8.

Comment I-63-14

Section 18980.5.2. Exemptions for Small Producers

This coalition would like to raise concerns regarding the exemptions for small producers outlined in the Act. Producers with gross sales within California under $1 million in the most recent calendar year may apply for an exemption. The application is subject to approval and “applicants” must register as producers before they are considered exempt. These fees and accounting obligations will surely add to the costs of our products to consumers. Entities exempted under the program should not be required to register as a producer, pay fees, or be subject to enforcement penalties. They are exempt. These entities could be allowed to simply self-certify and then be exempted entirely from the program.

Response to I-63-14

CalRecycle rejects this comment as it would undermine CalRecycle's statutory obligation to "establish a process" for the exemption to apply; simply allowing

self-certification would remove any process, and it would not allow the Department to ensure that statutory requirements are being met. Further, the regulations have already been revised from the initial drafts to lessen the burden on small producer applicants by only requiring small producers to establish that their sales were lower than the $1,000,000 threshold stated in PRC section 42060(a)(5) and provide basic information about the business as well as registration information. This balances the requirements for small businesses while allowing the Department to ensure that statutory obligations are being met. Finally, there is nothing in the regulations implying that a small producer meeting the statutory and regulatory requirements would be subject to paying any fees pay or enforcement penalties, and thus no further response is needed regarding this portion of the comment.

Comment I-63-15

ARTICLE 9: Source Reduction Baseline Report and Annual Reports
Section 18980.9. Source Reduction Baseline Report
Given the substantial delay in an approved final regulation, which subsequently delays the development of a plan from the PRO, our coalition is recommending changes to Article 9 Sections 18980.9. to accommodate for the delays.

Additionally, the current source reduction baseline report language may create confusion, as it could be interpreted to require individual producers to submit reports to the department even when they are members of a PRO. We recommend clarifying the draft regulation to be consistent with the statute (PRC 420579 (c)).

To provide more stability and accurate data for the Department and PRO we suggest the following updates to Section 18980.9(a) and Section 18980.9(c) (proposed additions in italics and deletions in bold strikethrough):

“18980.9 “(a) On or before July 1, ~~**2026**~~ *2027*, all reporting entities shall submit a source reduction baseline report to the Department. The source reduction baseline report shall be submitted electronically, and at minimum, include the total amount of plastic covered material, by weight and number of plastic components, for which ~~**they were**~~ *the reporting entity was the producer or, for a PRO, for which its participant producers* were the producers in the 2023 calendar year. The weight of plastic covered material shall be measured in accordance with paragraph (15) of subdivision (a) of section 18980.1.”

“(c) The Department shall use the information reported pursuant to this section to update the source reduction baseline pursuant to subdivision (b) of section 42057 of the Public Resources Code by November 1, ~~**2026**~~ *2027*.

Response to I-63-15

CalRecycle rejects this comment as the date of July 1, 2026 is necessary to ensure the statutory requirements are sufficiently met, including section 42051(b) of the PRC. Section 42051(b) requires that upon approval of a plan or commencing January 1, 2027, whichever is sooner, a producer shall not sell,

offer for sale, import, or distribute covered materials in the state unless that producer is covered by a PRO plan or is approved by CalRecycle as an Independent Producer. Therefore, by no later than January 1, 2027, producers should be complying with the Act and regulations. Thus, requiring the source reduction baseline report to be submitted to CalRecycle on or before July 1, 2026 gives the Department six months after the latest possible statutory date. This provides a balance by allowing adequate time for all reporting entities to gather the necessary information for the report, while also ensuring CalRecycle receives the information as expeditiously as possible to make any necessary updates to the source reduction baseline. Further, the July 1, 2026 date also aligns with the annual reporting dates including section 18980.6.5(a) of the proposed regulations, which should make for more efficient reporting. As this regulation is necessary for implementation of the act and aligns with statutory requirements while striking a balance between both adequate time for the reporting entities and adequate time for the Department, no change is required as it would undermine the above.

Lastly, the commenter's concern that the current wording regarding how reporting entities submit data "may create confusion" is without merit as this subsection does the opposite by clearly requiring electronic submission of source reduction baseline reports to the Department which establishes a consistent, uniform standard and format of submission to avoid any confusion, and a reporting entities interaction with the PRO and their method of data submission is outside the scope of this regulation, and thus no change is necessary. See also response to O-41-4 and 0-48-5.

Comment I-63-16

ARTICLE 10: Registration and Data Reporting Requirements Section 18980.10.2. Data Report Contents

We recognize that CalRecycle must establish a baseline for the 25% reduction using 2023 as the reference year, which necessitates requiring producers to submit their 2023 supply data.

Section 18980.10.2 details the data that producers must report, including the total weight of material sold, distributed, or imported in or into the state; the total number of plastic components sold, distributed, or imported in or into the state; the total weight of material disposed of; and the total weight of material recycled.

This proposed regulation requires a level of detail that may exceed the comprehensive record-keeping practices traditionally maintained by many producers, whose existing systems were not designed to track data for this regulatory purpose and will require significant refinement. While producers are committed to meeting these requirements, we respectfully request that the regulation include "good faith" language acknowledging the challenges of this initial reporting period. Specifically, producers are being asked to retrospectively compile data spanning three years, which will often necessitate

estimates derived through various sources, rather than data tracked through systems specifically designed for this reporting purpose.

We recommend adding a Section 18980.10.2(e) and propose the following language be included (proposed additions in italics):

(e) All data reported pursuant to this chapter shall be reported to the best of the producer's ability. Reporting errors for years 2023, 2024, and 2025 will not be subject to penalties if errors were made using a reasonable basis and disclosed in good faith.

Response to I-63-16

Comment rejected. The commenter requests that CalRecycle essentially create new carveouts that are not consistent with the statutory requirements, including the reporting required in section 42057 of the PRC, as well as the enforcement sections 42080 through 42081 of the PRC. The Department both declines and does not have the requisite authority to create the requested general and vague additional regulatory provision that would essentially exempt or shield reporting entities from penalties for reporting errors based on "good-faith" estimates and "errors were made using a reasonable basis", which again are vague and ambiguous to render it essentially unenforceable, and also exceeds the Departments statutory authority and undermines statutory text as referenced above. Lastly, it is worth noting that the Department did reduce the burden on reporting entities in previous versions of proposed regulations by requiring reporting to be in annual increments rather than monthly increments to find a balance between the statutory requirements, information needed by the department, and requirements of reporting entities. Thus, the department rejects this comment.

Comment I-63-17

Reporting Guidance:

Our coalition also wishes to raise concerns with the "Covered Material Categories Reporting Guidance" issued by CalRecycle on September 2, 2025, and CAA's related draft reporting instructions. We have identified several challenges that create unnecessary burdens and duplicate work compared to reporting structures already implemented in Oregon and Colorado.

First, CalRecycle's guidance instructs producers to treat adhesives or coatings containing polymers as plastic components. While CAA is proposing to rely on the de minimis exclusion [PRC Section 42041(s)(4)(A)] in statute for adhesives used in cardboard boxes and coatings on paperboard or metal cans, these exclusions will not be approved by CalRecycle until after the regulations are finalized. Collecting data now on the plastic content of adhesives and coatings is both labor-intensive and premature, since these materials are likely to be excluded. We request that CalRecycle and CAA allow postponement of this data collection until final decisions on de minimis exclusions are made to avoid collection of data that will not be needed for future reporting.

Second, we are concerned with the broad interpretation of “plastic component” to include items that will never be separately collected or recycled, such as adhesives or tape on cardboard boxes or tin/steel bimetal can lids. Tracking such components separately is impractical, does not contribute to measurable recycling outcomes, and represents wasted effort. The guidance requires detachable components to be reported separately, even if made of the same material and recycled through the same stream. For example, reporting can lids separately from can bodies diverges from reporting practices in Oregon and Colorado; these states instructed producers to report the entire packaging material as one item weight. While separate reporting may make sense when detachable components are made of different materials, identical components that are recycled together should be reported in aggregate.

For these reasons, we strongly encourage CalRecycle to revise its reporting guidance to avoid duplicative data collection and to harmonize requirements with other state programs. Doing so will ease compliance and reduce unnecessary costs.

Response to I-63-17

CalRecycle rejects this comment because it does not concern the proposed regulations themselves. It concerns a document that CalRecycle published separately from these proposed regulations. That document is related to the covered material categories list, which is another publication that is not part of these regulations.

Comment I-63-18

Plastic Pollution Mitigation Fund:

Lastly, our coalition underscores that strong public–private partnerships will be essential to meeting the demands of compliance under SB 54. We encourage the Department, in collaboration with other state agencies, to allocate resources for research and development of practical packaging alternatives that also meet federal and state requirements for preventing the spread of pests and disease. Investment from the Plastic Pollution Mitigation Fund, as established in statute, can play a critical role in accelerating the transition away from plastic packaging while safeguarding public health and protecting California’s food and agricultural systems. Given the scope of change required, the statutory timelines cannot realistically be achieved without robust collaboration between the public and private sectors. Strategic use of the Plastic Pollution Mitigation Fund will help producers comply with the Act while advancing its environmental goals and more rapidly reducing plastic pollution in California’s communities, beaches, and waterways.

Thank you for your consideration of these comments. We look forward to working with the Department and the PRO throughout the duration of this process.

Response to I-63-18

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42060 and 42064, and no

change is necessary to the implementation of the Act. This comment recommends collaboration between CalRecycle and other state agencies to allocate resources from the California Plastic Pollution Mitigation Fund for the research and development of packaging alternatives. However, the allocation of such funds is not within CalRecycle's statutory authority. Sections 42064(j) and (k) of the Public Resources Code provide that the environmental mitigation funds will only be allocated upon appropriation by the Legislature, and CalRecycle has no authority to depart from this requirement. Therefore, no change to the proposed regulations is necessary or appropriate.

I-64: Laila Sharpe

Comment I-64-1

My name is Laila Sharpe and I work with Environment California as the Clean Air and Water Intern. On behalf of Environment California, I urge CalRecycle to strengthen the regulations under SB 54 so that only real recycling technologies are allowed in our state. This is our opportunity to make California a national leader in real solutions to plastic pollution; by not allowing loopholes and false solutions to undermine the intent of SB 54. Allowing chemical recycling is worse than creating new plastics in many ways. It is similar to plastic incineration that releases toxic chemicals into our air and water. These facilities are often built in low-income neighborhoods and communities of color, adding to the environmental injustices that residents already face everyday. I grew up in the Southeastern part of San Diego, where pollution became normalized and communities like mine were often overlooked when it came to environmental protection. During heat waves and wild fires, the air would hang low and thick with smoke. By the age of sixteen, I was having migraines at least twice a week during wildfire season. My family just accepted it as normal and no one and no community should have to accept that in their home. Far too long families like mine have lived with the consequences of weak environmental policy. Policies like SB 54 are supposed to protect them from that kind of harm, not make it worse. I am asking CalRecycle to keep SB 54 strong and Governor Newsom to not approve anything that fails to represent the best interest of California residents. Ban chemical recycling. Hold producers accountable. And ensure the final regulations truly reduce plastic at the source, not shift the burden back onto communities already breathing air pollution. We have the chance to protect public health, clean air, and the environment across California. Please do not let weak regulations take that away. Thank you for your time and consideration.

Response to I-64-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology.

I-65: Julie Beer

Comment I-65-1

Hello. I am commenting on SB54, the Plastic Pollution Prevention Act. Please don't weaken this bill. Plastic pollution presents a serious health problem when ingested by ocean inhabitants and by people. Nanoparticles of plastic travel through our bloodstream and cause harm to our bodies . Thank you for protecting us.

Response to I-65-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

I-66: G M

Comment I-66-1

Twine should not be considered a compostable material. It gets tangled in trammel screens and other equipment.

Waxed cardboard should not be considered compostable and should never be labeled that way. Workers move quickly and don't examine every box. If you tell them some are compostable, they will all end up in the compost. Petroleum-based wax does not belong in our soil.

Bioplastics should never be considered compostable. They take too long to break down, create harmful microplastics in soil, and are very confusing to consumers. They also contaminate recyclable plastics. This also goes for poly-coated paper, particularly foodware. I work at events and consumers cannot tell the difference between a poly-coated plate and one that is fiber-only. They throw it all in the compost, leading to plastic particles in soil. Only uncoated fiber-based materials should be allowed for foodware.

Plastic cups should not be considered recyclable. After visiting many MRFs, I have never seen them baled; I do not think they are actually being recycled. They are often dirty, coated in smoothies, boba drinks, sweetened coffee beverages, milk shakes... They belong in the trash, are one of the most confusing items to consumers, and come with other plastics that are not recyclable (lids, stir sticks, straws). Also, by lying to consumers and policy makers by saying cups are recyclable, there is little incentive to move away from single-use and to the much more resource-conserving reusable cups. Reusables create green jobs and innovation. Single-use cups just end up in the landfill.

Section 18980.3.3(5) of the draft SB 54 regulations makes no sense! It says an item is designed to be associated with the recovery of desirable organic waste "if it is desirable

organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste." Being associated with organic waste does not transmit the magical property of being compostable! We see this with all foodware and food packaging. Consumers think if it touches food it somehow becomes compost! There are also no such things as magic words! Being labeled "compostable" does not make it so! Wow, fix this nonsense!

Chemical recycling is NOT recycling. Keep that toxic waste out of California and out of SB 54.

Regarding packaging that is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] ... to prevent microbial contamination or to maintain the safety or structural integrity of packaging...." These exclusions should only apply when "it is not reasonably possible to use other packaging or packaging components..." and should require providing a valid reason to the Department including the conflicting federal regulation and explanation as to why no possible alternative packaging can be utilized. The Department should also review exclusion requests and maintain a public list of determinations.

To simplify and encourage innovation, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are.

The current draft says that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities." This makes it difficult to attribute violations to the correct party, muddying the distinction of where the enforceability of a jurisdiction for a violation of this requirement ends and the point at which that responsibility transfers to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what's expected for compliance and how compliance will be determined.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle to simplify reporting for jurisdictions.

Response to I-66-1

Comment partially accepted and partially rejected. CalRecycle accepts this comment to the extent it asserts that the proposed regulations would have allowed businesses to submit to CalRecycle plainly insufficient or invalid claims that packaging should not be considered "covered material." Section 18980.2(a)(2) has been revised to include a robust procedure to prevent such claims and to require notices to justify claims with respect to objective factual criteria. These revisions implement the commenter's suggestion that submissions be reviewed by CalRecycle and required to include an "explanation

as to why no possible alternative packaging can be utilized." The revisions also describe in greater detail how CalRecycle will maintain the public database (i.e., "a public list") of exclusion claims and the effect of such claims appearing in the database.

Regarding the compostability or recyclability of the particular materials and items mentioned, the commenter proposes no revisions to the regulations, so no specific response is necessary. In any event, the purpose of the regulations is to establish how compostability and recyclability will be determined, not to codify any particular determinations. Regarding section 18980.3.3(c)(5), the commenter appears to misread that provision as concerning an independently sufficient condition for when items are considered eligible to be labeled "compostable"; nothing in the proposed regulations or statute suggest that. The commenter appears to take issue with the requirement that items must be "associated with [the recovery] of organic waste," but that requirement is established in statute (Public Resources Code section 42357(g)1)(E), not the proposed regulations.

Regarding chemical recycling, CalRecycle rejects the implied recommendation that the regulations ban chemical recycling, for the reason stated in response to comment O-62-1.

Regarding the proposal to limit exclusions under 18980.2(a)(2) to between two and five years, CalRecycle rejects that proposal because it would restrict CalRecycle's ability to determine that an exclusion was improperly claimed. See, also, CalRecycle's response to comment O-90-3.

Regarding the quoted text from section 18980.11(b), no change is necessary because the regulation is clear on its face and describes with particularity the compliance obligations of local jurisdictions and their recycling service providers. The sentence at issue identifies a discrete act and a particular moment: the transfer of collected material to a responsible end market or to an intermediate supply chain entity. The commenter also incorrectly states that responsibility for fulfilling the requirements of Public Resources Code section 42060.5 could transfer from the local jurisdiction to any entity outside its recycling program. There is no responsibility established by that section other than the one placed on local jurisdictions and recycling service providers operating a collection and recycling program. That responsibility cannot transfer to intermediate supply chain entities.

Regarding use of the existing Electronic Annual Report system, no regulation is necessary to establish the technical details of the electronic system that CalRecycle will use to facilitate reporting, so no revision is appropriate in response to the commenter's suggestion.

I-67: Dara Farnoush

Comment I-67-1

My name is Dara Farnoush, and I am a student at UC Davis.· I also am the president of the Surfrider chapter at Davis and the -- and I sit on the board of the CALPIRG students chapter.

In my comments today, I'd like to focus on the allowance of chemical recycling and the fact that it will cause a need for new virgin plastics instead of actually recycling the plastic.

Through both my classes and my cleanups, I've come to learn just how much plastic goes into our environment.· I think this statistic was mentioned earlier, but about a dump truck's worth of plastic gets dumped into the ocean every 45 seconds.

Plus, nearly half of all plastics that are produced are meant to be used just once.· After that, they're thrown away and they end up -- and they show up everywhere.· From the soil at the bottom of the ocean to every single person's brain and bloodstream.

I was visiting Big Bear Lake with my family. And while we were hiking along the edge of the lake, we -- my dad mentioned how beautiful the nature is and how lovely the view is.· And we couldn't tell that there was a whole town across the street when we looked out over the lake.

I pointed out a plastic bottle and a chip bag that were floating by the edge of the lake.· For me, they ruined the view, but I was quickly able to put them out of my head, because I'm used to seeing plastic on beach cleanups and hikes that I've done throughout the last couple years.

My dad, on the other hand, couldn't put it out of his head.· During the rest of our lap, he kept noticing the plastic trash all around the lake and the trail.· And I felt horrible that I shattered his rose-colored glasses.· But it definitely showed both of us how much work there needs to be made to clean up our environment and clean up plastics from our lifestyles.

Chemical recycling doesn't actually solve any of these problems, since it just incinerates the plastic.· And on top of not reducing our need for new plastics to be created, it creates toxic pollutants that harm our environment and threaten public health.

Plus, current regulations have a lot of sweeping exemptions.· Which means that a lot more plastic is being sent to landfills or discarded into our environment than is necessary.· So I'm asking CalRecycle to strengthen the regulations so that only real recycling technologies are allowed in California, not chemical recycling.

Response to I-67-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa) and 42060, and the recommended change is not necessary to the implementation of the Act.

Comment I-67-2

On top of that, I'm asking CalRecycle to not allow for broad exclusions for packaging of over-the-counter drugs and food or ag products.· But instead to institute an exemption process so that not only those who need it are exempted.· These changes will lead to more real recycling and therefore, less plastic in our parks, waterways, and landfills.· And it will create less demand for new plastics to be produced. Thank you.

Response to I-67-2

CalRecycle partially accepts and partially rejects this comment. CalRecycle rejects this comment with respect to over-the-counter drugs for the reasons stated in response to comment O-49-1. For the reasons stated in response to comment I-59-2, CalRecycle rejects the comment to the extent it requests an exemption process similar to the ones available pursuant to Public Resources Code section 42060(a)(3) and (4) (see section 18980.2.4 of the proposed regulations). CalRecycle also rejects the comment to the extent it suggests there should be no exclusion for food or agricultural goods packaging, for the reasons stated in response to comment I-19-1. CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

B-1: Dean Eldrenkamp (Dean Eldrenkamp)

Comment B-1-1

The regulation indicates "(d) Each producer that applies to become a participant of an approved PRO pursuant to subdivision (b) of this section shall, at the time of its

application, submit to the PRO that producer's supply data for calendar year 2023. For purposes of this subdivision, "supply data" means the information described in section 18980.10.2."

Calender Year 2023 data is 2 years old. Obtaining this data brings problems. Other existing EPR state reporting uses 2024 data. The CA plan should align and be updated and use of the more current 2024 data. This will save manufactures vast amounts of time and improve the accuracy of reported data.

Response to B-1-1

CalRecycle rejects this comment for the reasons stated in I-62-4 and I-62-8. Further, the commenter does not specify how the 2023 data will be problematic, and merely aligning with other EPR programs, which are unique and distinct to SB 54, does not provide a reasonable basis for a regulatory change.

B-2: Ahava River cards coloring books (Christina DiMari)

Comment B-2-1

Hello,
I am reaching out to ask a question.

I have a very small company that sells some of our greeting cards wholesale to stores. Each card is wrapped in a protective plastic art sleeve.

I am trying to figure out if that is now not allowed.

Can you help or call to discuss?

Response to B-2-1

Comment rejected. The comment does not address the proposed regulations themselves, suggest changes to them, or raise objections related to the rulemaking process. Instead, the comment requests that CalRecycle provide assistance with a specific compliance question directly to the commenter. Accordingly , no response is required. Moreover, even if this comment could be construed to raise an objection or recommend revisions relevant to the circumstances the commenter describes, no such revisions are warranted. The definition of "packaging" in statute (Public Resources Code section 42041(s)) is sufficiently clear on its face, and regulations are not required to address, nor could they feasibly address, every example good specifically.

B-3: Indiana Botanic Gardens INC (Konstantina Sotiroglou)

Comment B-3-1

I’m writing on behalf of Indiana Botanic Gardens INC regarding the SB 54 packaging producer requirements. Our California gross sales are under $1,000,000 across all channels (direct-to-consumer, marketplaces, and wholesale), and we intend to claim thesmall-producer exemption.
Could you please confirm where and how we should submit the exemption?
Specifically:
1. Should we file the exemption through CalRecycle’s producer registration portal, or via email to this inbox?
2. If the portal is required, could you please provide the exact link and any step-by-step guidance (e.g., “register as a producer → select small-producer exemption”)?
3. Are there any specific forms or templates you require for the attestation?
4. What supporting documentation should be included (e.g., CA gross sales summary by channel), and in what file format?
5. What is the effective period of the exemption and the renewal cadence?
6. For the $1,000,000 threshold, should we calculate based on all California gross sales (across all channels), or only sales associated with covered packaging materials?
For your convenience, we can attach:
Cover letter attestation (company letterhead)
California Gross Sales Worksheet (by channel), with totals clearly shown
We appreciate your guidance so we can proceed correctly and on time. Please let us know
if there is any additional information you need from us.

Response to B-3-1

Comment partially rejected and partially accepted. CalRecycle rejects this comment to the extent it was intended to request response to compliance and application questions specific to the commenter rather than to suggest changes to the proposed regulations or raise objections related to the rulemaking process. Because such questions are not objections or recommendations concerning the proposed regulations, no response is required in the context of this rulemaking.

However, to the extent the commenter's questions were intended to identify portions of the proposed regulations that require greater clarity, CalRecycle partially accepts it. Regarding how to file an exemption request, CalRecycle accepts the comment and has revised 18980.5.2(a) to explain that notices from small producers must be submitted via an online portal that CalRecycle will establish. Regarding the request for an "exact link," CalRecycle declines to include a link in the regulations themselves because codifying such ministerial details is unnecessary; no regulation is needed for CalRecycle to establish the specific URL used for accessing the portal. Regarding "specific forms or templates," no change the regulations are required because on online portal necessarily provides such detail, and 18980.5.2(a) now makes clear that such a portal will be provided. Codifying forms (i.e., including forms themselves in

regulations) that CalRecycle will provide via that portal is not necessary. Regarding the required "supporting documentation," 18980.5.2(a) appropriately leaves that to the discretion of submitters. Prescribing specific documentation would be unnecessarily rigid and would not respect the fact that the best evidence of sales might not be exactly the same for all small businesses. Regarding the file format, the proposed regulation resolves the commenter's question by explaining that use of CalRecycle's online portal, rather than solely discrete files, will be required, and codifying the exact technical details of such an online portal in regulations is not required. Regarding the effective period and renewals, that detail is made clear in 18980.5.2(b), which states when exemptions become effective and their duration, and 18980.5.2(c), which explains the renewal process. Regarding the $1,000,000 threshold, 18980.5.2(c) is sufficiently clear because it includes no limitation of gross sales to those associated with covered materials. The requirement, as clearly stated, relates to "gross sales in the state."

B-4: Vermont Hard Cider Company, LLC (Sue Citron)

Comment B-4-1

As a beverage manufacturer in Vermont, we are reviewing the reporting requirements under CA SB 54. We produce hard cider in cans, bottles and kegs and also co-pack a small amount of beer. We are not currently producing our spirit-based RTD beverages but we maintain our Out of State Spirit Shipper License. Our cider products are imported into CA via our CA distributors so our distributors report those shipments. We only report on beer produced under our Out of State Beer Manufacturer Certificate. All of our products are labeled with CA CRV. According to Public Resources Code 42041, beverage containers subject to CA Beverage Container Recycling and Liter Reduction Act are exempt. Would the cardboard packaging that hold a six or twelve pack of cans or bottles we produce also be exempt?

Response to B-4-1

Comment rejected. The comment does not address the regulations themselves, suggest changes to them, or raise objections related to the rulemaking process. Instead, the comment requests that CalRecycle provide assistance with a specific compliance question directly to the commenter. Accordingly , no response is required. Moreover, even if this comment could be construed to raise an objection or recommend revisions relevant to the circumstances the commenter describes, no such revisions are warranted. The definition of "packaging" in statute (Public Resources Code section 42041(s)) is sufficiently clear on its face, and regulations are not required to address, nor could they feasibly address, every example good specifically. Lastly, the regulations already include a provision offering clarity regarding application of the exclusion for beverage containers: section 18980.2(c) explains that that exclusion (Public Resources Code section 42041(e)(2)(E)) applies the definitions found in the California Beverage Container Recycling and Litter Reduction Act.

B-5: Coleto Brands (Darren Robling)

Comment B-5-1

Can Expanded Polyethylene (EPE) be added to the Covered Material Classification List and noted as to whether it is recyclable or not in California. It is a common material used in electronics packaging, along with Expanded Polystyrene (EPS or styrofoam) which is on the CMCL and noted as not recyclable. Should EPE be listed in the same code as EPS?

Response to B-5-1

Comment rejected. The comment concerns the Covered Material List that CalRecycle published, not the proposed regulations. Accordingly, no response is required here.

B-6: Ingevity (Brian Pontious)

Comment B-6-1

Ingevity is a world leader in polycaprolactone technology with 50 years of innovation and a long history of helping compounders and converters produce safer and higher-performing certified compostable plastics. Our company has actively advocated worldwide to increase access to organics recycling and offer solutions to regulators and legislators looking to protect and preserve our environment.

Ingevity appreciates the opportunity to comment on CalRecycle's proposed regulations for the implementation of SB 54.

Article 2- Covered Material and Covered Material Categories

Ingevity fully supports the revised language in § 18980.2(a)(2), which offers a clear and reasonable pathway for products to be exempted from being considered a covered material if they cannot comply with the program due to conflicts with federal law.

Specifically, Ingevity appreciates CalRecycle's newly proposed language in § 18980.2(a)(2)(A) which will bring transparency and fairness to this process of companies requesting exemptions. If companies seek to exempt certain products from being covered material, they need to justify that request to the department and clarify that no alternative that could meet the requirements of SB 54 is available. This will prevent misleading activity and ensure all companies are playing by the same fair rules. We also support creating a public database of these exemptions so that companies investing in innovative packaging can target those products and invest in creating sustainable alternatives that can meet the requirements of SB 54.

Ingevity was firmly opposed to the language proposed in these relevant sections during the last release of informally proposed text and appreciates CalRecycle listening to the concerns of stakeholders and making the proper adjustments.

Ingevity would like clarity on how exemption requests may be reconsidered. For example, if an alternative product becomes available, what is the process for removing a company's exemption for a certain product? Would a process for reconsideration of an exemption be covered by the language in18980.2(a)(2)(B)?

Response to B-6-1

Comment partially accepted and partially rejected. The comment does not recommend a change to the text of the proposed regulation, so no substantive response is required. However, to the extent the commenter's questions were intended to request that the proposed regulation itself provide "clarity on how exemption requests may be reconsidered," CalRecycle accepts the comment and has revised 18980.2(a)(2) accordingly. In particular, text was added to make clearer how CalRecycle and interested parties must evaluate whether avoiding the conflict is "not reasonably possible." Subparagraph (D) now more directly explains the effect of CalRecycle adding information about exclusion claims to the database it will maintain. Also, subparagraphs (C) through (F) of the revised regulation also more clearly explain the procedure for CalRecycle's receipt and reconsideration of notices of exclusion claims, the effect of duplicative or overlapping notices, and that the criteria provided applies to CalRecycle's consideration of notices submitted to it concerning the exclusion, as described in the revised text in subparagraphs (D) and (E).

Comment B-6-2

Article 2- Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware

Ingevity continues to oppose the substantial removal of language in §18980.2.1. affecting reuseable products. The new regulations leave reuseable products generally unregulated and susceptible to abuse. § 42041 within SB 54 loosely defines "reuseable" and leaves much to the interpretation of CalRecycle. By deleting provisions regulating the marketing and durability of reusable products, we fear companies will take advantage of the lack of clarity surrounding what is and what is not truly reuseable and "resin dump" into many single use products resulting in them being considered "reuseable" and landfilled instead of paying fees and being recycled or composted within the state. California faced this issue with plastic bags and we advise the removed criteria defining reusable products be added back to avoid creating the same "loophole" for packaging.

Solution: *We recommend reinstating the previous proposed regulations governing reuseable products in this section.*

Response to B-6-2

CalRecycle rejects this comment because it does not set forth any recommended change. The currently proposed regulations are the first regulations proposed in this rulemaking; there are no "previous proposed regulations" that are part of this rulemaking. In particular, the commenter does not identify how they propose to address the so-called "resin dump" issue, nor does the commenter explain how that practice would necessarily result in items satisfying the statutory reusability criteria. To the extent the commenter intended to suggest that regulations directly regulate items that satisfy the criteria in Public Resources Code section 42041(af), other than setting forth interpretations of those criteria, CalRecycle rejects that suggestion because such items are unambiguously not within the definition of "covered material." To the extent the commenter intended to suggest that the regulations impose a requirement on how many times a consumer-refilled item must be used for it to be considered "reusable," CalRecycle rejects that comment because 42041(af)(2) makes no reference to such a requirement, which would be practically impossible to assess, in any event. The only reasonable interpretation of section 42041(af)(2) is that the Legislature intended the robust requirements for consumer-refilled items to naturally result in sufficient reuse of the items, thereby avoiding the negative outcomes about which the commenter is concerned.

Comment B-6-3

Article-2 Section 18980.2.5. Covered Material Category List Updates

Ingevity continues to oppose the proposed changes in § 18980.2.5(b). While CalRecycle is only mandated to update the list annually, the department should update it as needed when new information is provided to the department. This change to the language will make the agency less responsive and delay California's efforts to ensure more products are put on the covered material categories list, collected, and recycled/composted.

Solution: *We recommend reinstating the language in* §18980.2.5(b).

Response to B-6-3

CalRecycle rejects the comment. The commenter recommends "reinstating the language" in section 18980.2.5(b). However, no language to "reinstate" is provided. Moreover, subdivision (a) explains when the list will be reviewed, with the potential consequence being that the list might be updated. Subdivision (b) of the proposed regulation explains the standard by which CalRecycle will decide, after that preceding review, if the list should be updated. The commenter appears to assume that the proposed regulation limits when CalRecycle may review and update the CMC list. That is incorrect: CalRecycle can update the list any time if determines that a change is warranted. Also, subdivision (f) expressly addresses the commenter's concern over updates "when new information is provided to the department"; that subdivision explains that CalRecycle will consider information submitted to it by April 1 and information submitted later, if

time permits, for purposes of updating the list in that year.
To the extent that this might be understood as seeking a requirement for a more frequent review of the CMC list, the comment is rejected for the following reasons. A binding commitment to review the list more frequently would significantly truncate the time needed to obtain longitudinal information and to analyze that information appropriately without the guarantee that review and changes are warranted.

Comment B-6-4

Article 3-Section 18980.3.3. Eligibility for Being Labeled "Compostable"

Ingevity strongly supports CalRecycle's newly proposed deletion of "desirable organic waste" in 18980.3.3(b)(5)(A). This language was repetitive and already applied appropriately in statute through Chapter 5.7

Response to B-6-4

Comment rejected. CalRecycle cannot locate the regulatory provision described by the commenter. In any event, the comment expresses support for the proposed regulation and does not propose any changes or raise any objection, so no response is required.

Comment B-6-5

Article 4- Responsible End Market Criteria - § 18980.4(a)(4)(B) and § 18980.4(a)(4)(C)

Ingevity continues to oppose the language in § 18980.4(a)(4)(B). While we appreciate that CalRecycle has now defined "biologically decompose" it does not alleviate our previously stated concerns nor the potential for market distortion. We previously requested CalRecycle to remove the term "biologically decompose" from § 18980.4(a)(4)(B) and for the language to be amended to recognize overs as a standard part of the composting process which are typically disposed of and sent to the landfill.

Similar to how some residuals in the recycling stream may be landfilled to sort out contamination, it is possible certified compostable products might be caught as overs along with other natural products like food waste and contamination from conventional plastic products. Rather than recognize this process for all products, CalRecycle has created § 18980.4(a)(4)(C) for paper and fiber products, which creates an unacceptable exemption and allows the overs of paper and fiber products to be landfilled, while language in § 18980.4(a)(4)(B) explicitly restricts an entity processing certified compostable plastics from disposing of undecomposed material. All certified compostable products, regardless of material type or material origin, should be meeting the same requirements as they are processed in an identical manner at the same responsible end market.

All certified compostable products, regardless of whether they contain plastic or not, should have to meet the same responsible end market requirements as they are all designed and certified to disintegrate and biodegrade in industrial compost facilities.

This proposed section would create an unfair advantage for paper and fiber products while possibly prohibiting any composter in California from being considered a responsible end market if they accept certified compostable plastic products. Finally, even if there was a reason to provide a special exemption for paper and fiber products, there is no reasonable way for composters to screen their overs and determine what items have plastic in them and what items do not have plastic in them. It may not be obvious which fiber or paper-based products contain barrier coatings which can contain natural or synthetic resins.

Solution: *We are requesting minor edits to 18980.4.(3)(B) as illustrated below to ensure your intent is accurately recorded and interpreted properly:*

(B)For items partially or wholly constituting plastic, any covered material or intentionally included in the process used to generate a recycled organic product must ~~fully~~ biologically decompose and be processed in a manner consistent with the management of other feedstocks to produce a marketable product which complies with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable. ~~The entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material and derivative material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).~~

Response to B-6-5

CalRecycle rejects this comment. The proposed regulations are consistent with the provisions of the Act, including PRC sections 42041(aa), 42041(ad) and 42060, and no change is necessary to the implementation of the Act. PRC section 42041(aa) provides that, to constitute recycling under the Act, covered material must be sent to a responsible end market. PRC section 42041(ad) defines a responsible end market as a materials market in which the recycling of materials is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. PRC section 42041(ad) further authorizes CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety. Sections 18980.4(a)(4)(B) and (C) of the proposed regulations implement these provisions by specifying how responsible end markets may be identified according to the covered materials they accept. Sections 18980.4(a)(4)(B) and (C) appropriately

set different standards for the identification of responsible end markets because the respective covered materials—i.e., covered material partially or wholly comprising plastic (18980.4(a)(4)(B)) and covered material comprising fiber or paper substrates (without a plastic component) or wholly derived from natural resources (18980.4(a)(4)(C))—pose different risks under the factors specified in PRC section 42041(ad). Specifically, the inclusion of non-plastic covered materials in the process used to generate a recycled organic product inherently presents different risks to the environment and public health than the inclusion of covered materials that partially or wholly comprise plastic in such process. PRC 42041(ad) explicitly authorizes CalRecycle to consider risks to the environment and public health that are posed by end market operations; because end market operations for the applicable covered materials present different risks, different standards for the identification of responsible end markets are necessary and appropriate.

Furthermore, to the extent this comment suggests section 18980.4(a)(4)(B) creates an unreasonable standard, no change is necessary. PRC section 42051.1(c)(2) establishes that a PRO is responsible for describing in its plan how it will support and achieve the collection, processing, recycling, composting, and the development of responsible end markets for covered materials to meet the requirements of the Act. The PRO is therefore responsible for describing in its plan how it will support and achieve any upgrades, including, for instance, technological or infrastructure upgrades, that may be necessary to enable covered materials to achieve recycling or composting requirements under the Act. To the extent further additional investment may be necessary to achieve these upgrades, the PRO may account for such investment in its plan under, for instance, PRC sections 42051.1(i)(3)(G) or (I) or PRC section 42051.1(j)(1)(F). Finally, to the extent this comment is concerned with overs in the composting process, no change is necessary. The biological decomposition requirements in sections 18980.4(a)(4)(B) and (C)—and the prohibition against disposal of undecomposed materials—are explicitly limited to materials that are intentionally included in the process used to generate a recycled organic product. Instead, materials that are inadvertently included in the process and that remain undecomposed must be treated as incompatible materials consistent with section 18980.4(a)(3). Therefore, an adequate process already exists under section 18980.4(a)(4)(B) and (C) for any unintentional overs in the composting process, and no change is necessary.

Comment B-6-6

Article 6- Section 18980.6.7. Eco-modulated Fee and Fee Schedule

Ingevity continues to strongly oppose the proposed language changes in §18980.6.7(a) and §18980.6.7(b). Delaying eco-modulation incentives will directly harm companies who made critical investments in their production facilities and supply chains to produce products that were expected to be sold at competitive prices due to eco-modulation incentives. Eco-modulation incentives for certified compostable products were

specifically put within statute as compostable products often cost more to produce compared to conventional products and these incentives were designed to help level the playing field. Delaying eco-modulation incentives will restrict the innovation currently taking place to bring sustainable solutions to the market quickly.

Solution: We strongly recommend removing the two-year delay.

Response to B-6-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(b) provides that a PRO shall determine producer fees based on the considerations specified in that section "[d]uring the first two years of operation and during the preparation of the plan[.]" Sections 18980.6.7(a) and (b) of the proposed regulations implement this provision by providing that, prior to the approval of a PRO plan and for two years following that approval, a PRO must charge its producers fees pursuant to PRC section 42053(b). Sections 18980.6.7(a) and (b) therefore do not impose an additional delay to eco-modulated fees beyond that which is required by statute; rather, they merely specify the timeline that is established in PRC section 42053(b). This timeline is necessary to ensure the PRO has sufficient data to support the allocation of eco-modulated fees before it must begin charging producers eco-modulated fees. Moreover, section 18980.6.7(c) of the proposed regulations permits the PRO to begin charging producers eco-modulated fees at any time following approval of the plan if the PRO determines it has sufficient data to support eco-modulated fees. Therefore, the current language of section 18980.6.7 appropriately balances the statutory requirement of PRC section 42053(b) and the practical realities of eco-modulated fees based on producer data with the opportunity and flexibility to charge eco-modulated fees at the earliest available opportunity. No further change is necessary.

Comment B-6-7

Article 11- Section 18980.11. Requirements for Local Jurisdictions and Recycling Service

Ingevity continues to oppose the proposed underlined language in §18980.11(b). We support CalRecycle seeking to clarify that local jurisdictions are not required to setup responsible end markets on their own. However, we remain concerned that this new language will be interpreted as a blanket exemption for local jurisdictions rather than being seen as criteria that can be used to request an exemption. We agree that it is the PRO's responsibility to work with local jurisdictions to create responsible end markets and local jurisdictions need clarity to ensure they will not be victim to any unnecessary enforcement action.

As interpreted, the proposed language would fundamentally change the foundation of how SB 54 works, contradict the stated goals of the program, and harm California's

circular economy efforts. SB 54 tasks local jurisdictions to work with the Producer Responsibility Organization (PRO) to ensure all material that is considered recyclable or compostable is collected and processed at a responsible end market. There should be no reason that a local jurisdiction does not have access to a responsible end market as the PRO will be tasked with working with each local jurisdiction in their local conditions to fund these services even if it requires building new facilities or investing in infrastructure to haul covered materials outside of certain communities.

Solution: We are requesting a minor amendment to ensure your intent is properly captured in the newly proposed language below:

(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and directs it to recycling at responsible end markets, either by transferring it to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge for grounds of applying for an extension or exemption in processes detailed in ~~rendering inclusion of the covered material in the program impracticable for purposes of~~ subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

If you have any questions regarding Ingevity's position, or need additional input, please contact me at Michael.Tschantz@ingevity.com

Response to B-6-7

CalRecycle rejects this comment for the reasons stated in response to comment B-48-9.

B-7: Janine M Chicourrat (Janine M Chicourrat)

Comment B-7-1

As the premier environmentally conscious hotel in Monterey County-and one of the top 10 eco hotels in the country ranked by USA Today-the Portola Hotel & Spa is deeply invested in eliminating single-use plastic across our hotel and spa facilities. In support of independently owned California businesses like ours, we urge you to ensure that the final regulations to implement California's landmark Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) are strong-ensuring plastic packaging and foodware intended to be covered by the law are not excluded in the source reduction and recycling mandates and dangerous chemical recycling remains prohibited as required by the law.

The Portola Hotel & Spa successfully provides a luxury experience for our guests; offering a variety of environmentally conscious amenities and features while reducing our carbon footprint. Strong implementation of SB 54 will further enable the Portola Hotel & Spa, and other hotels across the state, to reduce single-use plastic across operations and guest experiences by ensuring that plastic producers are financially responsible for managing their waste and that businesses like ours aren't left shouldering the cost. Additionally, the strong goals of SB 54 should drive innovation to make available more alternatives to single-use plastic on a faster and more economical timeline making endeavors for hotels to go plastic free more viable.

We thank you for your commitment to tackling the plastics crisis in California by signing SB 54 and urge you to fully uphold the goals of the law.

Response to B-7-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-19-1 and I-25-1.

B-8: CornNext (Melissa Fox)

Comment B-8-1

Executive Summary

CornNext Corporation respectfully submits these comments on the California Department of Resources Recycling and Recovery's (CalRecycle) draft regulations implementing SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. We urge CalRecycle to adopt revised definitions for "biodegradable" and "compostable" packaging materials within SB 54's Extended Producer Responsibility framework that properly distinguish between natural-source, non-polymeric agricultural products and industrially-synthesized bio-plastics.

Our core recommendation is the establishment of a tiered classification system for covered packaging materials under SB 54 that recognizes the fundamental differences between materials preserving original agricultural biochemistry versus those requiring synthetic polymer creation, supporting both the Act's environmental goals and coordination with federal organic agriculture standards.

Response to B-8-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the recommendation it mentions has been addressed in response to other portions of the submission setting forth that recommendation in greater detail.

Comment B-8-2

About CornNext Corporation

CornNext is a leading manufacturer of packaging materials derived directly from corn starch and other agricultural byproducts. Our products represent true agricultural circularity, converting farm waste streams into functional packaging through minimal processing that maintains the natural biodegradability of the source materials. We are committed to supporting California's environmental goals while maintaining the integrity of agricultural and organic systems.

Response to B-8-2

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment B-8-3

I. Current Regulatory Framework Limitations
Insufficient Distinction Between Natural and Synthetic Materials

The current draft regulations rely primarily on ASTM Standards D6400 and D6868 for compostability determinations, treating all materials that meet these technical specifications equally regardless of their origin or manufacturing process. This approach fails to recognize the fundamental environmental and agricultural differences between:
1. **Naturally-derived materials** that undergo minimal physical processing (corn starch molding, fiber formation)
2. **Synthetic bio-plastics** requiring industrial fermentation, chemical synthesis, and polymer creation (PLA, PHA, etc.)

Misalignment with USDA Organic Standards
California's current framework creates regulatory inconsistency with federal organic agriculture standards. The USDA National Organic Program (NOP) severely restricts synthetic materials in compost feedstocks, allowing only newspapers as synthetic inputs. Yet California's regulations would classify synthetic bio-plastics as equivalent to natural agricultural materials for compostability purposes, potentially compromising organic agricultural systems.

Response to B-8-3

Comment rejected. CalRecycle cannot fully parse this comment because it does not explain how the proposed regulations do what the commenter alleges ("rely primarily on ASTM Standards D6400 and D6868 for compostability determinations..."), nor does it identify any proposed regulation that the commenter recommends be changed. The proposed regulations make no reference to ASTM standards D6400 or D6868, and the commenter does not explain how the proposed regulations "classify" materials in any particular way. In any event, the commenter is incorrect as a matter of law that synthetic materials may be treated the same as non-synthetic materials for purposes of

determining compostability or that "California's current framework" is inconsistent with federal agriculture standards. As acknowledged in section 18980.3.3(a) of the proposed regulations, Public Resources Code section 42357(g)(1)(B) applies to compostability and incorporates the National Organic Program limitations on synthetic inputs. To the extent the commenter's objection is that Public Resources Code section 42357 also includes the requirement that materials satisfy the ASTM standards referenced, CalRecycle rejects that objection because it concerns statutory requirements that cannot be modified via regulation.

Comment B-8-4

II. Proposed Tiered Classification System for SB 54 Packaging Materials
Tier 1: Natural-Source, Non-Polymeric Compostable Materials
Definition: Materials derived directly from agricultural crops, crop residues, or agricultural processing byproducts through physical transformation processes that involve no chemical modification of the starch backbone, no polymerization, and no creation of new synthetic polymers.
Characteristics:
• Source materials: Unmodified corn starch, wheat straw, bagasse, cotton fibers, wood fibers
• Processing: Physical molding, heating, fiber formation, pressing, or shaping without chemical alteration of molecular structure
• No synthetic polymer creation, industrial fermentation, or chemical synthesis of new compounds
• Biodegrades readily under varied environmental conditions
• Maintains original agricultural biochemistry
Regulatory Treatment:
• Expedited approval for "compostable" labeling under SB 54
• Presumptively compatible with organic composting principles, subject to NOP guidance and local facility policies
• Standard ASTM testing requirements (D6400/D6868)
• Priority consideration for EPR fee reductions or credits
• Clear feedstock labeling requirements for downstream transparency

Tier 2: Bio-Synthetic Compostable Materials
Definition: Materials derived from renewable biological feedstocks but requiring industrial processes including fermentation, chemical synthesis, polymer creation, or other substantial molecular transformation that alters the original agricultural biochemistry.
Characteristics:
• Source materials: Corn (processed into PLA), sugarcane (processed into PHA), etc.
• Processing: Industrial fermentation, chemical synthesis, polymer engineering, molecular modification
• Requires specific industrial composting conditions for optimal degradation
• Subject to enhanced testing requirements due to synthetic polymer characteristics
Regulatory Treatment:

• Enhanced testing requirements including mandatory microplastics residue assessment
• Polymer-specific molecular degradation verification (sub-2mm particle analysis plus analytical identification)
• Soil biodegradation testing (ISO 17556) and ecotoxicity/plant growth assessment
• Evidence-based eco-modulation in EPR fee structures
• Comprehensive feedstock labeling for informed facility and farmer selection

Response to B-8-4

Comment rejected. This comment provides background for the proposals set forth later in this submission, in comments B-8-6 through B-8-8. To the extent this comment requires a response, CalRecycle has provided it via its responses to comments B-8-6 through B-8-8.

Comment B-8-5

III. Technical and Environmental Justifications
Biodegradation Performance Differences

Natural-source, non-polymeric materials demonstrate superior biodegradation characteristics:
1. **Broader Environmental Compatibility:** Corn starch-based materials with unmodified molecular structure biodegrade effectively across varying temperature, moisture, and microbial conditions, unlike synthetic bio-plastics requiring specific industrial composting parameters.
2. **Enhanced Molecular Breakdown:** Materials preserving original agricultural biochemistry decompose to their constituent agricultural compounds, supporting soil health. However, we recommend mandatory microplastics residue assessment and polymer-specific molecular degradation verification for bio-synthetic materials to ensure complete breakdown below detection thresholds.
3. **Infrastructure Independence:** Natural-source materials compost successfully in municipal, industrial, and appropriate home composting systems, reducing California's dependence on specialized industrial composting infrastructure under SB 54's waste diversion goals.

Agricultural System Coordination
The National Organic Coalition and numerous organic farmers have explicitly opposed inclusion of synthetic compostable packaging in organic compost systems. Rather than substituting SB 54 standards for existing organic regulations, we recommend coordination between CalRecycle and USDA National Organic Program policies to ensure complementary rather than conflicting frameworks for compostable packaging materials.

Microplastic Assessment and Testing Protocol Enhancement
Current ASTM testing protocols require enhancement for bio-synthetic materials. ASTM standards consider materials "biodegraded" if they pass through a 2mm sieve, but this only confirms particle size reduction, not molecular decomposition. We recommend CalRecycle require mandatory microplastics residue assessment using analytical

methods capable of detecting and identifying particles below 2mm thresholds, combined with polymer-specific molecular degradation verification to ensure complete breakdown rather than fragmentation.

Response to B-8-5

Comment rejected. This comment provides background for the proposals set forth later in this submission, in comments B-8-6 through B-8-8. To the extent this comment requires a response, CalRecycle has provided it via its responses to comments B-8-6 through B-8-8.

Comment B-8-6

IV. Specific Regulatory Recommendations
1. Revised Definitions
§ [X].1 Natural-Source, Non-Polymeric Compostable Material
"A packaging material covered under SB 54 that is derived directly from agricultural crops, crop processing residues, or other naturally occurring organic matter through physical transformation processes that involve no chemical modification of the starch backbone, no polymerization, and no creation of new synthetic polymers. Processing may include molding, heating, fiber formation, pressing, or shaping that preserves the original agricultural biochemistry and biodegradability characteristics of the source material."

Response to B-8-6

Comment rejected. The commenter proposes a definition of the term "Natural-source, non-polymeric compostable material." As the commenter explains in comment B-18-17, the purpose of the definition is to fit into a proposed "tiered classification system that properly distinguishes between natural-source, non-polymeric and bio-synthetic compostable packaging materials." As explained in response to the other portions of the commenter's submission, however, that classification system ignores the framework mandated by statute and attempts to address matters outside the scope of the statute and these proposed regulations. Accordingly, defining this term is unnecessary and would not serve any valid purpose.

Comment B-8-7

§ [X].2 Bio-Synthetic Compostable Material
"A material derived from renewable biological feedstocks but requiring industrial processes including fermentation, chemical synthesis, polymer creation, or other substantial molecular transformation that alters the natural biodegradability characteristics of the source material."

Response to B-8-7

Comment rejected. The commenter proposes a definition of the term "Bio-Synthetic Compostable Material." As the commenter explains in comment B-18-17, the purpose of the definition is to fit into a proposed "tiered classification

system that properly distinguishes between natural-source, non-polymeric and bio-synthetic compostable packaging materials." Here and in other comments, the commenter fails to explain clearly how that framework relates to the statute, however. The commenter may have intended to suggest that the definition of materials as "Bio-Synthetic Compostable Material" or "Natural-Source, Non-Polymeric Compostable Material" (with a definition proposed in comment B-8-6) be used to determine whether materials should be considered compliant with the compostability requirement of Public Resources Code section 42050(b). That approach would be unlawful; the statute requires compliance with that provision to be assessed with respect to the requirements set forth in Public Resources Code sections 42355 through 42358.5.

Comment B-8-8

2. Enhanced Testing Protocols for Bio-Synthetic Materials

• **Mandatory microplastics residue assessment** using analytical methods capable of detecting and identifying particles below 2mm thresholds
• **Polymer-specific molecular degradation verification** beyond particle size reduction, including analytical identification of breakdown products
• **Soil biodegradation testing** according to ISO 17556 or equivalent standards
• **Ecotoxicity and plant growth assessment** for agricultural application compatibility
• **Long-term persistence testing** in various environmental conditions

Response to B-8-8

Comment rejected. This portion of the commenter's submission, which overall proposes a "tiered classification system that properly distinguishes between natural-source, non-polymeric and bio-synthetic compostable packaging materials," sets forth "testing protocols" for materials fitting the definition proposed in comment B-8-7. As explained in response to that comment, however, that framework does not appear to relate to the requirements of statute and the mandate of these proposed regulations. The commenter may propose the testing protocols for the purpose of determining whether the sale of certain materials is lawful or whether the materials comply with Public Resources Code section 42050(b). The testing protocols have no relation to any statutory provision, however, and the statute does not authorize CalRecycle to impose a sales restriction based on criteria other than those specifically identified for applying the recyclability and "eligible for being labeled 'compostable'" requirements. The commenter may instead have intended to propose testing protocols as required methods that composters must use to be considered "responsible end markets." CalRecycle declines to adopt those protocols because they are directed at the characteristics of the recycled organic product and are more precise than can be justified under statute, which requires processes to output products (including compost) "that meet the quality standards necessary to be used in the marketplace." Because that is the overall requirement, statute requires the more flexible approach described in section 18980.4(a)(4)(C).

Comment B-8-9

3. Feedstock Labeling and Data Transparency Requirements

• **Clear feedstock identification:** Compost facilities must clearly label whether feedstock includes Tier 1, Tier 2, or mixed material sources
• **Data transparency:** Public reporting of feedstock composition to enable informed choices by farmers and end-users
• **Facility disclosure:** Composting operations must maintain records of material sources and make information available to agricultural customers
• **Chain of custody:** Documentation requirements for traceability from packaging producer to compost end-user

Response to B-8-9

Comment rejected. CalRecycle rejects this comment because it relates to a framework for classifying materials that, as explained in response to comments B-8-7 and B-8-8, is either irrelevant to or inconsistent with statute. To the extent the commenter proposes "labeling and data transparency requirements" as requirements for composters to be considered "responsible end markets," CalRecycle rejects that proposal for the reasons explained in response to comment B-8-8. The labeling and transparency requirements would serve potential marketplace needs for the sale of recycled organic product produced by composters; those needs to not concern whether the composters' operations meet the statutory definition of "responsible end markets." That definition concerns how the recycling and recovery of materials affects the environment and health and safety, not the marketplace for materials after they are a finished recycled product. While the "chain of custody" requirement is relevant to evaluating the recycling of covered materials, the proposed regulations already impose such a requirement (18980.4(a)(2)). For these reasons and those set forth in response to the other portions of this submission, no change is necessary.

Comment B-8-10

4. EPR Eco-Modulation Implementation

• **Fee reductions or credits for Tier 1 materials:** Given lower infrastructure dependency and broader composting compatibility, CalRecycle should implement preferential EPR fee treatment for natural-source, non-polymeric materials
• **Evidence-based eco-modulation for Tier 2:** Bio-synthetic materials should face eco-modulated fees based on documented infrastructure requirements, processing complexity, and environmental impact assessments
• **Infrastructure incentives:** Prioritize development of composting infrastructure compatible with both material tiers while recognizing differential processing needs
• **Market development support:** Facilitate creation of premium markets for agricultural-grade compost produced from clearly identified feedstock sources

Response to B-8-10

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule that includes producer fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e). Section 18980.6.7(b) and (f) implement these requirements by clarifying the eco-modulation requirement for producer fees. The relevant statutory and regulatory provisions, including PRC section 42053(d) and section 18980.6.7(f) of the proposed regulations, already require the PRO to ensure that eco-modulated fees reflect the relative ease with which specific covered materials are recycled or composted, which necessarily incorporates considerations of material composition and the applicable recycling infrastructure. Therefore, section 18980.6.7 of the proposed regulations already incorporates the considerations of this comment while preserving the PRO's discretion to develop and establish the producer fee schedule in a manner consistent with PRC section 42053. No further change is necessary.

Comment B-8-11

V. Environmental Justice and Economic Considerations
Supporting True Agricultural Circularity
California's EPR program should prioritize materials that genuinely support agricultural circularity rather than creating new waste streams. Corn-based materials represent authentic agricultural recycling, converting crop residues and processing byproducts into functional packaging that returns nutrients to agricultural systems upon composting.
Farmer Economic Protection
Many organic and sustainable farmers have invested significantly in compost-based soil management systems. Protecting the integrity of these systems by distinguishing natural from synthetic compostable materials safeguards farmer investments and maintains consumer confidence in organic agricultural products.
Supply Chain Transparency
Natural materials offer superior supply chain transparency and traceability compared to synthetic bio-plastics requiring complex industrial processing. This transparency supports California's environmental justice goals by enabling communities to understand and evaluate the materials entering their local composting and agricultural systems.

Response to B-8-11

Comment rejected. The commenter describes three issues and asserts that they should be priorities in the "EPR program." First, first the commenter states that the program should "prioritize" certain materials. CalRecycle does not have authority under the statute to select certain materials and "prioritize" them, and the commenter does not explain what it would mean to do so. Instead, the statute necessarily considers any material compliant if the material satisfies the requirements of Public Resources Code section 42050. Second, the commenter

states that "compost-based soil management systems" should be "safeguard[ed]" by "[p]rotecting the integrity of those systems." This proposal, while potentially addressing important public policy issues, is vague and does not appear relevant to implementing any statutory provision. Third, the commenter asserts that "[n]atural materials offer superior supply chain transparency and traceability." Regardless of whether that is true, this assertion is not a recommendation of any change to the proposed regulatory text, so no further response is required.

Comment B-8-12

VI. Implementation Timeline and Stakeholder Engagement
Proposed Implementation Schedule
• **Phase 1 (2026):** Implement tiered classification system for new product registrations under SB 54, with safe-harbor provisions for products currently in development or pilot programs
• **Phase 2 (2027):** Apply enhanced testing requirements to bio-synthetic materials, with transition period for existing certified products
• **Phase 3 (2028):** Full integration with feedstock labeling and data transparency requirements
• **Phase 4 (2029-2030):** Comprehensive evaluation and system optimization, maintaining grandfathering provisions for compliant products

Response to B-8-12

Comment rejected. This comment relates to implementation of the framework described in earlier portions in the commenter's submission. As explained in response to those earlier portions, the various elements of that framework are either irrelevant to or inconsistent with the statute and the mandate that the proposed regulations implement and enforce it. Accordingly, CalRecycle rejects this comment for the reasons provided in response to comments B-8-1 through B-8-11.

Comment B-8-13

Transition and Safe-Harbor Provisions
To avoid cliff-edge compliance impacts, CalRecycle should establish:
• **18-month transition period** for products currently certified under existing standards
• **Pilot program protections** for innovative materials undergoing testing or development
• **Good faith compliance safe-harbor** for producers making reasonable efforts to meet new requirements
• **Technical assistance programs** to support smaller producers in achieving compliance

Response to B-8-13

Comment rejected. This comment relates to implementation of the framework described in earlier portions in the commenter's submission. As explained in

response to those earlier portions, the various elements of that framework are either irrelevant to or inconsistent with the statute and the mandate that the proposed regulations implement and enforce it. Accordingly, CalRecycle rejects this comment for the reasons provided in response to comments B-8-1 through B-8-12.

Comment B-8-14

Stakeholder Collaboration Framework
CornNext recommends CalRecycle establish a **Natural Materials Working Group** including:
• Agricultural producers and organic farming representatives
• Natural material manufacturers
• Compost facility operators
• Environmental justice organizations
• Academic researchers specializing in biodegradation science

Response to B-8-14

Comment rejected. CalRecycle rejects this comment for the same reasons set forth in response to comment B-8-13. The "compliance" that this comment refers to does not implement any compliance requirement set forth in statute but rather relates to the framework, described elsewhere in the commenter's submission, that does not have any legitimate place in the proposed regulations.

Comment B-8-15

VII. Legal and Regulatory Consistency
Federal Alignment and Biobased Content Leadership
Our proposed approach aligns California's EPR regulations with existing federal frameworks:
• **USDA National Organic Program:** Coordinates with (rather than substitutes for) existing restrictions on synthetic materials in organic compost systems
• **FDA Food Contact Standards:** Recognizes different safety profiles for natural vs. synthetic materials
• **ASTM International Standards:** Builds upon existing testing while addressing identified limitations through enhanced protocols
USDA Biobased Product Recognition: We note that USDA recently announced a new product category for "Disposable Drinking Straws," requiring a minimum 69% biobased content under the BioPreferred Program. CornNext's CornNext-17 product line, at 98% biobased content, significantly exceeds this federal threshold, demonstrating our leadership in the emerging federal classification system. This federal recognition underscores the importance of CalRecycle adopting definitions that properly distinguish truly natural, agricultural-source materials from industrially synthesized bio-plastics, even when both may qualify as "biobased" under federal standards.
Interstate Commerce Considerations
The tiered system protects California's regulatory authority while facilitating interstate commerce by providing clear, science-based classifications that other states can adopt or recognize through reciprocity agreements.

Response to B-8-15

Comment rejected. CalRecycle rejects this comment for the same reasons set forth in response to comment B-8-13. The comment refers to legal programs and concepts with respect to the framework discussed elsewhere in the commenter's submission, but that framework mostly irrelevant to the statute and has no legitimate place in the proposed regulations, as explained in response to the other portions of the commenter's submission.

Comment B-8-16

VIII. Conclusion and Call to Action

California has the opportunity to lead the nation in developing truly sustainable packaging standards within its EPR framework that support both SB 54's environmental goals and agricultural system integrity. By implementing a tiered classification system that properly distinguishes between natural-source, non-polymeric and bio-synthetic compostable packaging materials, CalRecycle can ensure that SB 54 achieves its waste reduction and recycling objectives while coordinating effectively with federal organic agriculture standards.

CornNext urges CalRecycle to:

1. **Adopt the proposed tiered classification system** for biodegradable and compostable packaging materials under SB 54

2. **Implement enhanced testing requirements** for bio-synthetic materials including mandatory microplastics residue assessment and polymer-specific molecular degradation verification

3. **Establish feedstock labeling and data transparency requirements to** enable informed facility and farmer choices

4. **Coordinate with USDA organic standards** to ensure complementary rather than conflicting frameworks

5. **Implement EPR fee reductions or credits for Tier 1 materials** given their lower infrastructure dependency and broader compatibility

6. **Provide transition and safe-harbor provisions** to avoid cliff-edge compliance impacts for existing products and pilot programs

We appreciate CalRecycle's commitment to comprehensive stakeholder engagement and look forward to working collaboratively to implement these essential improvements to California's groundbreaking environmental legislation.

Response to B-8-16

Comment rejected. No response to this portion of the commenter's submission is necessary because it lists the recommendations discussed in greater detail in earlier portions of the submission. CalRecycle has addressed those recommendations in response to those earlier portions, so no further response is necessary here.

B-9: Buoy, LLC (Adrian Colesberry)

Comment B-9-1

My name is Adrian Colesberry. I am the CEO and co-founder of Buoy, a California LLC that buys recycled plastics from Envision in Chino and makes reusable water bottles, coffee cups and food containers in one of our third party manufacturers in Oxnard or Tracy, www.buoy.eco.

The bill does not provide for demand and innovation around using recycled plastics. When discussing this law with the National Stewardship Action Council, I thought that Buoy would be considered a responsible end market, but that does not seem to be what the term means. In the definition in 42041 (ad) and throughout the bill, a lot is said about setting up responsible end markets, but these all seem like MRFs or PRFs, assuring that the supply of recycled plastic is converted responsibly to usable resin.

But supply does not create demand. What is the plan to create demand? If there were enough demand for recovered resin, much of this law would not be needed. (A law is not needed to tell people to recycle metal. Industries fall in place to do this because metal recycling is profitable.) Demand for anything, plastic included, would pull the supply chain into place. Virgin resin is going to be cheap for a long time. It is one of the few things in the world that the US makes cheaply, and Chinese resin has a downwards effect on the price also. For there to be a market for all the recycled plastic that this bill aims to create, demand and innovation must be cultivated and possibly subsidized. You are certainly following Europe and the closures of recycling plants. The plants and investments created by this bill will also blow away in the wind if no one lines up to buy it. It is my suspicion that the intent is to send these materials out of state, per California's usual strategy.

Re. 42041 (ad) The last sentence is too vague. No human activity is a benefit to the environment, not building a house, not driving down the street, and the only way to minimize risk in any human activity is to not engage in it entirely. The lack of attention to demand combined with this vague wording sets up California to do what it historically prefers to do with anything that anyone can interpret as even slightly negative, which is shove it outside the borders of California. This is not responsible in any way. I've run Pharma plants and departments in California for decades. I know there are state laws on the books already, probably among the strongest in the world, that regulate industrial activities and employee safety. There is no reason to give this legislation vague authority over those already very rugged laws.

Response to B-9-1

CalRecycle rejects this comment. To the extent this comment recommends revising the proposed regulations to redefine responsible end markets to address the need to create demand for recycled plastic, no change is necessary. See the response to comment O-56-10. Moreover, demand for recycled plastic is already encouraged elsewhere in the Act, including, for instance, PRC sections 42053(e)(1) and 42057(a)(2)(B)(i). To the extent this comment argues that the criteria concerning environmental benefits in PRC section 42041(ad) is too vague, no change is necessary or appropriate. Because that language comes directly from the text of PRC section 42041(ad), CalRecycle has no authority to revise that language. However, section 18980.4(a) of the proposed regulations implements the language of PRC section 42041(ad) by clarifying the criteria that must be satisfied for an end market to be identified as a responsible end market. The proposed regulations are consistent with the relevant statutory provisions, including PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act.

B-10: IKEA of Sweden, Inter IKEA Group (Anders Persson)

Comment B-10-1

Dear Director Heller,

At IKEA, we have an ambition to transition towards a circular business model, and we believe well-designed EPR programs can help increase recycling. We write to express our appreciation for CalRecycle's commitment to developing these draft regulations in a thorough and collaborative process with external stakeholders to implement SB 54 and create a more circular economy in California.

We have identified one primary area below related to the draft regulation's *Covered Material and Covered Material Categories* section that could be improved to ensure the state's recycling system is adequately funded by all participating producers.

Response to B-10-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues to which it allude have been addressed in response to other portions of the submission.

Comment B-10-2

Section 18980.2. Categorically Excluded Materials

To comply with federal requirements established by USDA and FDA, the proposed regulation creates an exemption for "packaging or packaging components used by a

food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components."

However, any exempted food and agricultural packaging will likely still flow into the same recycling waste stream as covered materials, especially for examples where the same packaging type is used for both exempt and non-exempt material categories and when primary sortation is done by the consumer. As a result, recycling facilities and haulers will still need to collect, sort, and process these exempt materials. At the same time, the Circular Action Alliance (CAA) will be responsible for covering these costs—even though the producers of exempt packaging sold in California are not required to pay fees to CAA.

To ensure the producer responsibility organization (PRO) and the recycling system are adequately funded, we recommend CalRecycle work with CAA to develop a formula that accounts for categorically exempt materials entering the recycling stream. This would ensure the CAA only pays for the processing and recycling of covered material categories.

Thank you for your commitment to implementing SB 54 and helping create a more sustainable and circular future for the residents and businesses of California.

Response to B-10-2

CalRecycle rejects this comment because it does not recommend any revision to the proposed regulation. Instead, it proposes a course of action that the commenter recommends CalRecycle and CAA undertake to address effects of "categorically exempt materials" expected to be in waste streams.

B-11: The Procter & Gamble Company (Julie Froelicher)

Comment B-11-1

Dear Director Heller:

The Procter & Gamble Company (“P&G1”) would like to submit the following recommendations for the permanent draft regulations for SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, published on August 22, 2025 (“Formal Proposed Regulations”). As the world’s largest consumer goods company, we have a concerted interest that the SB 54 program drives maximum sustainability benefits while ensuring affordability and availability for all Californians; protecting health and safety of California consumers; enabling federal regulatory compliance; and providing continued opportunity for innovation and product quality in California. Importantly, P&G fully supports Governor Newsom’s direction to the Department that the Formal Proposed Regulations “ensure California’s bold recycling law can achieve its goal of cutting plastic pollution and is implemented fairly — minimizing costs for…working families as much as possible.”2 We recognize the progress the Department has made with the Formal Proposed Regulations toward this goal from

earlier informal draft versions but believe significant further changes are needed to fully realize the Governor's vision for cost-effective SB 54 implementation for California consumers.

P&G continues to have significant concerns about the ability to implement the Formal Proposed Regulations in a way that is cost-effective and safe for consumers. We highlight below necessary changes that are needed in the Formal Proposed Regulations. The following summarizes the critical issues with the current SB 54 Draft Regulation that we discuss at length in this comment letter and require modification of the Formal Proposed Regulations to serve the best interests of the consumers of California:

- **OTC Drug Exclusion** – exclude all FDA-regulated OTC drugs from SB 54 requirements to keep these products available and affordable to California consumers.

- **Detachable Components** – align with the APR Design Guides to recognize that caps reattached to a larger package are a recyclable unit and to reinforce a favorable consumer recycling behavior.

- **Source Reduction Compliance Measurement Period** – allow producers to demonstrate source reduction reporting for January 1, 2027, 2030, and 2032 using the measurement period of the respective calendar years of 2027, 2030, and 2032.

- **Source Reduction Adjustment Factor** – allow the PRO to incorporate an adjustment factor for product sales growth over time in the program plan.

- **Measurement of PCR Credit for Source Reduction** – remove the 2023 baseline year so as not to penalize producers who voluntarily adopted sustainability measures and incorporated PCR decades ago.

- **Physical Recycling** – recognize physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling, to broaden the potential applications for recycled plastic and promote continued

circularity in similar types of applications. This will help reduce the amount of plastic that is downcycled.

- **Malus Fees for Covered Materials Containing Prop 65 Materials above Established Exposure Levels** – recognize the OEHHA-established exposure levels for Prop 65 materials.

_____

1 The Procter & Gamble Company serves nearly five billion people around the world with its brands. The Company has one of the strongest portfolios of trusted, quality, leadership brands, including Always®, Ambi Pur®, Ariel®, Bounty®, Charmin®, Crest®, Dawn®, Downy®, Fairy®, Febreze®, Gain®, Gillette®, Head & Shoulders®, Lenor®, Olay®, Oral-B®, Pampers®, Pantene®, SK-II®, Tide®, Vicks®, and Whisper®. The P&G community includes operations in approximately 70 countries worldwide. Please visit http://www.pg.com for the latest news and in-depth information about P&G and its brands. 2 Kamisher, Eliyahu. “Newsom Orders Redo of California’s Landmark Anti-Plastic Rules, Citing Cost.” Bloomberg. 7 March, 2025.

Response to B-11-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

Comment B-11-2

For convenience, we have also attached relevant sections of the Formal Proposed Regulations with P&G’s specific proposed edits in Appendix 2.

Additionally, we highlight at the end of our letter a few improvements in the Formal Proposed Regulations that are critical to be maintained:

•**Refillable/Reusable Design and Labeling Requirements** – The deletion of overly burdensome and uniform design and labeling requirements of refillable/reusable packaging enables more effective design and labeling.

•**Minimum Duration of Exemptions** – The two-year minimum duration for an approved exemption provides much needed certainty to producers and should be maintained. *Additionally, we urge the Department to urgently provide guidance on the exemption application process to allow producers to start preparing applications for critical materials, such as mono-material flexible films, which are necessary to safely and hygienically deliver staple products*

•**Corrective Action Plans** – The additional clarity that CalRecycle has the authority to enter into a Corrective Action Plan to resolve violations on any terms the parties mutually agree is critical to enable sufficient flexibility for practical implementation solutions.

Response to B-11-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-11-3

NECESSARY CHANGES IN FORMAL PROPOSED REGULATIONS

P&G urges the Department to incorporate the following changes, as described, in the Formal Proposed Regulations to ensure regulatory implementation is feasible, achieves the actual intended outcomes, complies with the law, is cost-effective and safe for consumers, and ensures product availability in California.

OTC Drug Exclusion (Section 18980.2(a)(6))

Paragraph (6) of subdivision (a) provides an exclusion for over the counter (OTC) drugs. **This exclusion is supported by the text of the law and should be preserved in the Formal Proposed Regulations,** as these Medical Products must meet stringent Food & Drug Administration (FDA) requirements that limit the ability to use certain packaging materials, to source reduce packaging or to consider reusable packaging. OTC drugs face the same regulatory scrutiny and unique compliance challenges that prescription drugs do, and it is appropriate to exclude them.

However, this OTC drug exclusion is unnecessarily narrowed by subparagraphs (A) and (B) the plain reading of which limits the OTC drug exclusion to exclude cosmetics and soaps that are considered OTC drugs solely because of sunscreen active ingredients. (Note, there is a potential alternative interpretation of this section that would limit the OTC drug exclusion to only medicines by removing OTC drugs that also make cosmetic claims, are soap, or contain sunscreen active ingredients. If no other changes are made, we strongly urge the Department to revise this section to remove the potential for this alternative interpretation.)

All FDA-regulated OTC drugs (i.e., all OTC products that display a "Drug Facts" panel on packaging) are medical products under 21 U.S.C. 321(g) and are excluded by the plain language of the SB 54 statute. As such, all OTC drugs should be exempt from SB 54 requirements without exception. The fact that some OTC drugs also provide secondary benefits (e.g., cosmetic, cleaning, or sunscreen) does not change the fact that they are OTC drugs and are considered medical products under 21 U.S.C. 321(g). These products provide consumers with important health benefits to which, without an exclusion, consumers may lose access or must buy multiple products, using more packaging, to receive the same benefits. The Department must adhere to the statutory language and not use the regulations to narrow the statutory exemption.

Rationale: There is a significant risk that if required to comply with the stringent SB 54 source reduction requirements, many OTC health and oral care product SKUs (assuming the alternative interpretation) may be eliminated in California, especially in smaller sizes. This would severely impact consumer access to essential anti-dandruff OTC shampoos and OTC oral care solutions, exacerbating health care challenges for low-income California consumers. Over 31% of Californians are considered "near poor" or live below the poverty line, affecting approximately 12 million people3.For example, P&G's Oral Care research tells us that households that make less than $35K/year buy smaller toothpaste sizes than other higher income households, indicating a pattern to buy smaller size packages to manage costs. Without application of the OTC drug exclusion to all OTC drug products, regardless of their secondary benefits, manufacturers will be forced to eliminate or upsize many of the affordable oral health products and medicated shampoos upon which these Californians rely.

Furthermore, all OTC regulated products must meet stringent FDA criteria for active levels/concentration throughout the product shelf life, whether a medication or application such as mouthwash or toothpaste. Significant lightweighting of these packages cannot meet requirements for moisture/vapor transmission, resulting in changes in active levels that would fall outside the OTC drug requirements to which all OTC drugs are subject. Traditional methods of reducing plastic for liquids, such as compaction through concentration, are also not available due to active level requirements. This, combined with the Consumer Product Safety Commission's Poison Prevention Packaging Act (PPPA) requirements of Child Resistant Closures (where required), creates untenable challenges in meeting reduction targets for FDA-regulated OTC products.

Without including all products that are regulated as OTC drugs by the FDA (those which are required to include a "Drug Facts" panel on their packaging) in the medical products exclusion (21 U.S.C. 321(g)) as required SB 54 statute, manufacturers will be forced to eliminate or upsize many affordable product options or separate consumer benefits into multiple product offerings. For example, most toothpaste provides an anti-cavity benefit by containing fluoride and is regulated by the FDA because it makes a claim about preventing cavities. P&G's Crest® toothpastes provide additional benefits consumers value – like protection from sensitivity, fresh breath and whiter teeth – in addition to cavity prevention. If the potential alternative interpretation of the current OTC drug exclusion was adopted, it could lead manufacturers to separate the exact same toothpaste formula into two consumer products, one that makes claims about whitening teeth and freshening breath and one that makes claims only about anti-cavity benefits. The toothpaste that makes only anti-cavity claims would be excluded under the Formal Proposed Regulations as an OTC drug that is not also a cosmetic, even though it also provides the same whitening or freshening benefits.

Similarly, if the potential alternative interpretation is adopted, manufacturers of medicated shampoos like Head & Shoulders®, which combine a cleaning benefit with a drug benefit in preventing dandruff, or Olay® skincare products that have moisturizing benefits and skin cancer protection with an SPF ingredient, could be forced to separate

these “all in one” products” into two separate products, one regulated solely as an OTC drug but not a soap/cosmetic, and one regulated only as a soap/cosmetic; one excluded from the SB 54 regulations and one not. Consumers will be disadvantaged by having to pay more to purchase more products to obtain the same benefits from what was once a single product. Some consumers may also choose to not purchase multiple products and miss out on important health benefits that these “all in one” products provide.

_____

3 Poverty in California - Public Policy Institute of California.

Response to B-11-3

CalRecycle rejects this comment. As stated in greater detail in the Initial Statement of Reasons, inclusion of three distinct terms to describe the excluded packaging ("medical products," "devices," and "prescription drugs") establishes that the Legislature intended to exclude medical goods other than just prescription drugs and "devices" (a defined term under the Federal Food, Drug, and Cosmetic Act). There would have been no reason to identify prescription drugs, and not drugs generally, if the exclusion applied to all drugs. Accordingly, the term "medical products" must be given a meaning that does not encompass all drugs, and the most reasonable one aligns with the term's common, colloquial understanding: that products that serve cosmetic purposes are not considered "medical products," but items that serve only medical purposes are. The commenter's preferred interpretation would render the statute's express limitation of exempted drugs to "prescription" ones meaningless; doing so would violate long-standing principles of statutory interpretation.

Comment B-11-4

Detachable Components – Actual Recycling Rates and Recyclability (Section 18980.1. and Section 18980.3.)

Additional language was added to subparagraph (ii) of subparagraph (C) of paragraph (4) of subdivision (a) of Section 18980.1 to specify that a “detachable component” is defined by certain characteristics “regardless of whether the component is discarded attached to the other components.” This additional language is directly contrary to the Association of Plastic Recyclers (APR) Design Guide, which recommends leaving plastic caps on bottles and containers when recycling.

APR’s Design Guide recommends caps be attached to packaging prior to disposal because it dramatically improves recovery of these materials in the recycling stream; if caps were separated prior to disposal, they are much more likely to be lost in the sortation process. When caps are attached, material recovery facilities process and recover the caps along with the bottles, eventually sorting out and recovering differing material types where necessary through additional processing steps. The cap material is typically recyclable high-density polyethylene (HDPE) or polypropylene (PP) plastic, for which recycling collection and processing technology has improved, so reattaching caps to bottles prior to disposal optimizes recovery.

Additionally, when recycling is made easier, participation in recycling programs goes up. P&G placed a large-scale consumer study (September 2025) to understand existing consumer habits when recycling, specific to behaviors of recycling packages consisting of a bottle and cap. The quantitative study included a sample of 2,000 US nationally representative consumers including 196 California consumers. Consumers were exposed to a stimulus defining the survey topic space showing a variety of packaging/brands across laundry, cleaning, beauty, and beverage containers consisting of plastic bottles with lids to set proper context. The study clearly demonstrates that both in California and the United States in general, consumers consistently replace caps on packages prior to recycling:

- 82.4% of California consumers indicate they recycle packaging with caps reattached to bottles.
- 77.2% of total US consumers indicate they recycle packaging with caps reattached to bottles.

Net, the clear consumer habit is to recycle bottles with caps attached, which is not a surprise given it prevents any remaining product flow/odors, reduces number of items in their bin, and matches years of recycling instruction communication from organizations such as APR and How2Recycle.

Taking a position contrary to the APR Design Guide, as the Formal Proposed Regulations do, negatively impacts both the calculation of actual recycling rates for components and the recyclability determination for components in a way that does not match current recycling practices.

For the calculation of actual recycling rates for components, under the Formal Proposed Regulations a recycling rate is calculated using the covered material category applicable to each component standing on its own, regardless of whether the component is designed to be reattached to the primary packaging. The APR Design Guides instruct components to be reattached, and current material recovery facilities process the packaging as a whole and sort it into a single recycling stream. Understanding this guidance, a single recycling rate should be calculated for the covered material category applicable to component and the packaging to which it is reattached. **P&G proposes adding language to Section 18980.1. and Section 18980.3.2. to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.**

For recyclability determinations for components, under the Formal Proposed Regulations components that are less than 2 inches by 2 inches in size may not be considered recyclable due to their small size and current processing limitations with material recovery facilities. However, these same components are actually recyclable when designed to be reattached to the larger recyclable packaging, pursuant to APR Design Guides. To ensure the correct recyclability determination of components that are

intended to be reattached to a recyclable packaging, **P&G proposes adding language to Section 18980.1 to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.**

To illustrate these points, consider that a laundry detergent bottle often has a screw cap that is also used as a dosing mechanism. The bottle is typically made of HDPE plastic, and the cap is typically made of PP plastic to avoid leaks and spills, as PP provides a significantly better seal than alternative material types and offers superior durability for packaging that may be dropped. Under APR Design Guides, the PP cap should be reattached to the HDPE bottle prior to disposal. Material recovery facilities collect the bottle with the cap attached and process the entire package (cap and bottle) as part of the HDPE recycling stream, and compatible with the end markets of the HDPE recycling stream. In this instance, the entire package *should* be classified as a whole package under the HDPE material classification category, despite the dosing cap being made of PP, because the entire package is actually recycled with the HDPE material stream. The Formal Proposed Regulations do not recognize this APR Design Guide approach that is used by material recovery facilities and instead requires that producers classify the PP cap under a separate PP material classification category for purposes of determining whether the cap is recyclable and whether the cap material meets the required actual recycling rates. This has the perverse practical result of banning these PP caps, which today are recycled with the HDPE bottles at high rates, if the separate PP material category does not achieve the required 30% recycling rate by January 1, 2028, which we anticipate it will not.

P&G's proposed changes would ensure that the Proposed Regulations align with the APR Design Guides and actual practices of material recovery facilities. This alignment requires evaluation of components in conjunction with primary packaging. It would also ensure that a packaging component that is fully recyclable and actually recycled in practice is considered recyclable and uses an accurate recycling rate under SB 54. **Together, these changes to the Formal Proposed Regulations will optimize and simplify consumer participation and maximize the amount of plastic material that will be recovered through the recycling process.**

For a full discussion of how plastic components are recycled with plastic packaging, please see APR's Discussion Brief, shared with their permission, in Appendix 1.

Response to B-11-4

Regarding detachable components, CalRecycle rejects the suggested change for the reasons stated in response to comment O-39-5 and O-41-3.

Regarding the calculation of recycling rates for components, CalRecycle rejectes this comment. The commenter fails to explain why a component's covered material categories should be disregarded for purposes of the recycling rate calculation because the "Design Guides instruct components to be reattached."

For one, the usefulness of that instruction is dubious, as it relates to consumer behavior. Furthermore, if that instruction were effective, the result would be that the component has the same recycling rate of the components to which it is attached. No explanation is provided for why the components should, in effect, be disregarded based on the potential that they may be reattached prior to disposal. The commenter is describing an outcome more appropriately framed around the components being of a de minimis weight or volume, as described in section 18980.2.2(b).

Comment B-11-5

Compliance Measurement Period for Source Reduction (Section 18980.9.1.)

Neither SB 54 nor the Formal Proposed Regulations specify the reporting period to be used for measuring compliance against the source reduction requirements. It is imperative that producers know now when compliance will be measured to know what they must do to comply. **P&G proposes adding language to paragraph (2) of subdivision (d) to specify that source reduction requirements that are required as of January 1, 2027, 2030, and 2032, are based on producer source reduction reporting using the measurement period of the respective calendar years of 2027, 2030, and 2032.**

Rationale: Material usage data from the respective calendar years of 2027, 2030, and 2032 will be most reflective of what is on the market and the source reduction that has been achieved by January 1st of the respective reporting year. Should producers need to report material usage data from a time period any earlier than calendar year 2027, it would be impossible. For example, if usage data from calendar year 2026 is required to prove compliance with the January 1, 2027 source reduction date, this would mean that P&G and other producers would need to comply with SB 54's source reduction requirements by January 1, 2026, long before the approval of a PRO plan that is required to allocate the source reduction requirements among the various producers and presumably around the same time the regulations specifying the details of the PRO-level source reduction requirements are finalized.

P&G and other producers do not and will not have the information necessary to implement source reduction compliance any earlier than calendar year 2027. We currently have less than 3 months until January 2026, do not yet have finalized regulations, finalized CMC material description guidance, or an approved PRO plan, and require a much longer lead time to develop, test, and implement packaging changes. While P&G has been researching potential alternative packaging designs since SB 54 was passed, it is impossible for P&G to implement any changes until the regulations and related guidance are finalized given that changes to the draft regulations and CMC material description guidance have significant impacts on P&G's potential approaches to compliance, as we have already witnessed with certain changes made in recent months. Potentially, the only way for producers to comply with the January 1, 2027, source reduction requirement that would propose a material usage data time period earlier than calendar year 2027 would be for producers to cease selling

products in California for some period of time in 2026, which is not in the best interests of California's consumers nor its affected businesses within the state.

Response to B-11-5

CalRecycle rejects this comment for the reasons stated in I-63-15, B-27-2, O-48-5, and O-41-4.

Comment B-11-6

Source Reduction Adjustments, including for Sales Growth (Section 18980.8.3.)

The wholesale deletion of Section 18980.8.3 removes the PRO's express ability to utilize important, common sense adjustment factors in the development of its source reduction plan. The deleted section included adjustment factors for fluctuations in economic conditions and the change in number of producers participating in the PRO plan. **Paragraph (a) of this section should be restored, and P&G proposes adding a third common sense adjustment factor for the PRO to incorporate into its source reduction plan: adjustments for product sales growth over time.**

Rationale: The adjustment factors in the deleted text protect against arbitrary shifts in economic conditions or the number of producers participating in the PRO plan. For example, without these adjustment factors, an economic decline that results in lower consumer consumption in a reporting year may result in the PRO achieving its source reduction targets without any producer changes to packaging.

P&G's proposal to add a third adjustment factor to account for product sales growth over time allows the PRO to incorporate producer reporting of sales adjusted material usage into its source reduction plan to normalize for business growth. Without such an adjustment factor, the Formal Proposed Regulations penalize sales growth by disproportionately forcing producers with growing sales to reduce more plastic usage to compensate for additional products sold. An adjustment for sales growth ensures that a large, steadily growing company like P&G, which may be doing

everything possible to source reduce its packaging for individual products, is not subject to anticompetitive standards that require P&G to meet more rigorous requirements than a company with stagnant or declining sales, potentially requiring growing companies to cease or even reverse their sales growth in California to meet absolute source reduction requirements. A sales growth adjustment decouples growth from plastic usage long-term, thereby enabling fair and robust competition among businesses in California and allowing businesses whose innovation is rewarded by California's consumers to grow in the California market by focusing on source reduction by product sold versus absolute source reduction.

Response to B-11-6

Comment rejected. The commenter references "[p]aragraph (a) of this sections" and "deleted text," but the currently proposed regulations are the only regulations relevant to this rulemaking. Without including that paragraph for CalRecycle to consider, there is no alternative text for CalRecycle to consider. Nevertheless, CalRecycle understands the commenter to propose some method for the PRO's plan to allow reduction in its source reduction burden where that burden would be greater, in terms of absolute reduction, due to increases in sales of covered materials. CalRecycle declines to make such a change because it would be unnecessary and contrary to statute, which contemplates no adjustment to the requirement stated in Public Resources Code section 42057(a). Moreover, the statute does not preclude the PRO plan from having provisions accommodating the growth experienced by individual businesses, and section already has multiple provisions accounting for the problem the commenter describes. Section 42057(f)(2) requires the PRO to give credit to producers that achieved reductions from 2013 to 2022. Section 42057(g) requires the PRO to penalize producers that add new covered material to optimize their packaging; in other words, when a producer expands its usage of covered (due to business growth or otherwise), statute clearly intended that the producer would face an enhanced burden. Lastly, 42057(h) is expressly directed at "ensur[ing] source reductions achieved by January 1, 2032, are not lost after [that date] while still allowing for businesses to grow." To that end, CalRecycle is authorized, beginning in 2040, to impose new requirements to ensure that the source reduction requirement of section (as established in 42057(a)) will be met. These provisions reflect a clear intent for the PRO not to have flexibility to alter how the PRO's overall source reduction will be evaluated (i.e., neither the goal nor the calculation of source reduction can be adjusted). To the extent increases in sales put satisfaction of the source reduction requirement at risk, statute clearly puts the burden on the PRO to account for that risk.

Comment B-11-7

Measurement of PCR Credit for Source Reduction (Section 18980.3.4.)

SB 54 specifies that the PRO may apply for a source reduction credit up to 8% through an alternative compliance formula that offers source reduction credit "on a sliding scale based on the ratio of virgin plastic to postconsumer recycled content plastic to producers who incorporate postconsumer recycled content into plastic covered material." Paragraph (1) of subdivision (b) of Section 18980.3.4 of the Formal Proposed Regulations requires that the PRO measure the increase in absolute amount of postconsumer recycled content (PCR) used versus a 2023 baseline. **P&G proposes revisions to this paragraph to remove the 2023 baseline.**

Rationale: Although SB 54 requires CalRecycle to determine a 2023 baseline for purposes of measuring overall source reduction, nothing in SB 54 requires CalRecycle to adopt a 2023 baseline for purposes of determining this credit. Many producers began incorporating PCR into packaging decades ago and had already achieved significant amounts of PCR usage by 2023. For example, P&G has averaged 28% PCR use in our North America laundry HDPE packaging for the past 20 years. Measuring producers' absolute volume increase of PCR based on a 2023 baseline does not recognize, and in fact penalizes, the proactive sustainability efforts of producers who voluntarily took early action to incorporate PCR into plastic packaging prior to 2023. Necessarily, due to PCR already incorporated prior to 2023, the ability to incorporate more is limited.

Response to B-11-7

Comment rejected. The commenter's proposal is incompatible with the plain meaning of Public Resources Code sections 42041(aj) and 42057(a) and (b), which unambiguously establish that source reduction must be assessed against the amount of plastic covered material created relative to the amount created in 2023. The commenter proposes that the "alternative compliance formula" described in 42057(a)(2)(B)(i) be allowed to credit actions taken before 2023 as source reduction since to 2023. Nothing in statute suggests that CalRecycle has the authority to give the alternative compliance formula such an incongruous effect.

Comment B-11-8

Physical Recycling (Section 18980.4.1.)

P&G strongly urges the Department to restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling. The Department recognized physical recycling in earlier versions of the draft regulations. Rationale: Physical recycling enables a method to clean plastic and remove contaminants from the recycling stream in a manner that also results in significantly reduced greenhouse gas emissions compared to virgin resin. Physical processes are not chemical recycling because they maintain "plastic to plastic" recycling, as they do not chemically alter the plastic polymers or break chemical bonds but rather remove both intentionally and unintentionally added materials to vastly improve the quality of recycled plastics and produce a high-quality post-consumer

recyclate (PCR). The chart below published by the Nova Institute4 provides a clear visual of where physical recycling (see “Dissolution Physical Process”) resides in the spectrum of recycling processes. Physical processes can also be operated in tandem with mechanical processes to vastly improve the quality of output. This broadens the potential applications for recycled plastic and promotes continued circularity in similar types of applications, helping to reduce the amount of plastic that is downcycled. Physical recycling processes do not result in significant hazardous waste production.

Response to B-11-8

CalRecycle rejects this comment, which suggests that "physical recycling" should be considered on par with mechanical recycling for purposes of Public Resources Code section 42041(aa)(5), as applied in section 18980.4.1(d) of the proposed regulations. CalRecycle declines to make that change because "physical recycling" is still a developing, "advanced recycling" technique and necessarily involves the use of chemical solvents. It is therefore fundamentally distinct from mechanical recycling in terms of environmental risks.

Comment B-11-9

Malus Fees for Covered Materials Containing Prop 65 Chemicals above Established Exposure Levels (Section 18980.6.7.)

P&G recommends adding language in paragraph (i) to restrict any Prop 65-listed chemicals in packaging that are present at levels that would expose consumers above the respective exposure levels (No Significant Risk Levels-NSRLs/Maximum Allowable Dose Levels-MADLs) established by the Office of Environmental Health Hazard Assessment (OEHHA).

Rationale: Prop 65 is an exposure-based statute that does not restrict chemicals solely based on presence at any level. Instead, Prop 65 establishes “safe harbor” levels that determine acceptable exposure limits for chemicals without significant health risks over a lifetime of exposure (NSRLs and MADLs). As written, the Formal Proposed Regulations are not in alignment with the Prop 65 statute, regulations, and guidance provided by OEHHA. This creates a fundamental inconsistency between the two agencies and disregards the work OEHHA has done to establish meaningful risk-based “safe harbor” limits. Current testing and compliance systems are not set up to measure and report Prop 65-listed chemicals at trace levels well below those established by OEHHA. Requiring the establishment of a new level of trace contaminant monitoring imposes significant costs, while such trace levels do not present any significant risk to consumer health. It also negatively impacts circularity by unduly restricting the amount of recycled content that could be incorporated into packaging, again for no benefit.

4 https://renewable-carbon.eu/news/advanced-recycling-on-the-rise-rapid-growth-in-capacitiesat-global-and-european-level/

Response to B-11-9

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. PRC section 42053(e)(4) requires a PRO to adjust its participant producer fees based on the presence of hazardous material as identified by the Office of Environmental Health Hazard Assessment (OEHHA), the Department of Toxic Substances Control, or CalRecycle. Section 18980.6.7(i) of the proposed regulations implements this statutory requirement by requiring a PRO to 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. That list, which is also known as the Prop. 65 list, is administered by the OEHHA and represents a list of chemicals that are known to the state to cause cancer or reproductive toxicity at certain levels. While Prop. 65 may recognize safe harbor levels in the context of that program, PRC section 42053(e)(4) does not include such nuance; rather, the adjustment of producer fees pursuant to that section is based on the mere presence of certain materials. Section 18980.6.7(i) of the proposed regulations is consistent with the purpose of PRC section 42053(e), with the definition of "malus fee" in PRC section 42041(o), and with the broader purpose of the Act because it establishes a low threshold for malus fees that is designed to reflect the environmental or public health impacts of covered material and to discourage the use of covered material that has such negative impacts. However, section 18980.6.7(i) of the proposed regulations only provides that a PRO must charge a malus fee to producers who use such covered material; it does not specify the fee amount that must be charged. A PRO is therefore welcome to consider exposure levels or any other relevant factor when deciding on the appropriate fee to charge a participant producer. The PRO is best suited to assess the appropriate malus fee to charge under section 18980.6.7(i) because it will have the organizational ability to communicate with the relevant producer and it will have ready access to any pertinent information. Specifically, because the environmental or public health risks presented by covered materials in which hazardous materials are present may be affected by many factors, including the quantity of covered materials containing such hazardous materials or the treatment of those covered materials in the recycling process, the PRO is best suited to determine an appropriate malus fee after the presence threshold has been established. Section 18980.6.7(i) therefore strikes an appropriate balance between discouraging the use of covered materials that might present certain environmental or public health risks while maintaining adequate flexibility for a PRO to tailor its participant producer fees based on the specific harms presented by a given covered material.

Comment B-11-10

IMPROVEMENTS IN FORMAL PROPOSED REGULATIONS

P&G urges the Department to preserve the following critical provisions in the Formal Proposed Regulations that address the practicality of the program, while protecting health and safety of California consumers and providing for continued opportunity for

innovation. These improvements address issues that P&G believes are critical to the cost-effective and safe implementation of SB 54.

Refillable/Reusable Design and Labeling Requirement Deletion (Section 18980.2.1.)

The deletion of paragraphs (4) and (5) of subdivision (a) remove from the Formal Proposed Regulations arbitrary and overly burdensome requirements. **It is critical to preserve the deletion of these paragraphs**, as they would have applied uniform requirements to the design and labeling of reusable/refillable packaging despite significant differences in packaging types and purposes across consumer product categories.

Rationale: There are tens of thousands of product packages that are covered by SB 54, each with their own unique purpose and usage. For a refillable/reusable package to be successfully adopted by consumers, its design and marketing must be consumer-led and consumer focused. Consumers have different expectations across different types of product packaging, and producers must have the flexibility to be able to meet these varying expectations. Producers are best positioned to analyze and choose the most effective communication and labeling to convey that a package should be utilized multiple times. For durability, different types of products are used and refilled at varying frequencies. Overly prescriptive and uniform durability requirements do not consider the variability of product packaging usage and can have the unintended consequence of requiring producers to use more plastic than necessary to meet the arbitrary requirements that do not reflect real world conditions.

Minimum Duration of Exemptions (Section 18980.2.4.)

The revisions to subdivision (g) change the minimum duration for an approved exemption from one year to two years, providing a longer period of certainty for producers who may use the material that is granted an exemption. **This revision provides greater certainty to producers and should be preserved.**

We strongly encourage the Department to provide guidance to producers on the exemption application process as early as possible to give producers direction and allow time to generate the supporting data necessary to substantiate exemption applications. Producers will submit exemption applications for review (via the PRO) as soon as the Formal Proposed Regulations are finalized for critical materials that are unlikely to meet the 2028 recyclability rate, have unique challenges, are needed to protect safety or consumer health and hygiene, and where no viable alternatives exist. A prime example is mono-material flexible films for essential health and hygiene products like diapers, baby wipes, toilet tissue and paper towels, which require the highest standards of protection at an affordable cost. Alternate packaging has unique challenges including higher contamination (insects, foreign material) and moisture permeation (diapers become less absorbent), which lead to compromised performance, health and safety issues for consumers, and a higher cost and environmental impact. P&G and other producers are working with external partnerships, such as CalFlex, to develop the needed recycling infrastructure in California for these

mono-material flexible films and other critical materials. We simply need more time to develop this infrastructure and will need to rely upon exemptions for these critical materials to help bridge the gap to compliance. The need for exemptions will be plentiful, as very few plastic materials will meet the aggressive 30% recyclability rate by 2028, and it will take time for the PRO to educate consumers and change consumer recycling habits. Producers need this direction from the Department to ensure exemption applications can be swiftly processed and approved for uninterrupted business operations to meet consumer demand for their daily-use products while producers and the PRO work toward compliance.

Rationale: This change provides necessary certainty to producers about the continued availability of an exemption for critical packaging materials. Making packaging changes and finding replacement materials can take substantial time and planning to ensure the viability, safety, and consumer acceptance for new packaging materials, often across a broad range of product categories. Our experience at P&G is that finding and qualifying new replacement packaging materials, when possible, can take as long as two to five years, so producers need as much certainty as possible on whether a material will be available for use in California. Without this certainty, producers may be forced to remove products, including consumer staples, from the California marketplace while they find and qualify replacement packaging.

Corrective Action Plans (Section 18980.13.1(a))

This section clarifies that CalRecycle has the authority to enter into a Corrective Action Plan (CAP) agreement with a producer to resolve violations on any terms the parties mutually deem appropriate and that CalRecycle is not required to issue financial penalties.

Rationale: CalRecycle is not limited in their authority to pursue a CAP as a standalone compliance mechanism. This provides the Department more flexibility to prioritize compliance as part of its enforcement policy and work with producers who are doing everything within their power to achieve this shared goal.

***

While not part of the Formal Proposed Regulations, P&G would like to use this opportunity to thank the Department for the reclassification of single-sided, polycoated paperboard into the 25_PF 10P Covered Material Category (CMC) in the September 2 publication of the updated CMC Guidance. We were extremely pleased to see this development after discussing this classification issue with you and your staff in our August 26 meeting in Sacramento and believe this removes an obstacle for packaging innovation and allows P&G to make an important step forward in SB 54 compliance in California. Thank you for your attention to this reclassification.

Please contact me if you have any questions about the content of P&G's recommendations or would like more information about the practical impact on producers and California consumers. Thank you for incorporating P&G's recommendations into your efforts on the Formal Proposed Regulations.

Sincerely,
Julie Froelicher
Senior Director, Global Product Stewardship
The Procter & Gamble Company
1 P&G Plaza
Cincinnati, OH 45202
Froelicher.jm@pg.com

Response to B-11-10

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues. Regarding the encouragement that CalRecycle provide "guidance" concerning application processes, that encouragement is not a proposed change to the regulations and does not require further response. No regulation is required for CalRecycle to provide the requested guidance.

Comment B-11-11

Appendix 1

APR Brief on Detachable Components
APR DISCUSSION BRIEF

HOW PLASTIC COMPONENTS ARE RECYCLED WITH PLASTIC PACKAGING & REQUESTED CHANGES TO SB54 DETACHABLE COMPONENT DEFINITION

The Association of Plastic Recyclers (APR) represents over 80% of the processing capacity for post-consumer plastic packaging in North America. Our members include the businesses that recycle most of the PET, HDPE, LDPE, and PP plastic packaging after it has been collected by California's curbside and CRV recycling programs. This includes five California-based processors (reclaimers) of post-consumer recycled plastics, as well as dozens of California-based businesses throughout the value chain of plastics recycling.

APR has spent 30 years working with recyclers, producers, and the entire supply chain to design plastic packaging, including plastic packaging components, to be compatible with recycling processes. When components are designed to be recyclable and recycled, we can create a system where residents can simply put the entire plastic package into the recycling bin and the entire package--including attached plastic components--can be effectively sorted and recycled by MRFs and plastic reclaimers. As the voice of plastic recyclers, APR is focused on how the SB 54 requirements can effectively and efficiently drive higher recycling rates for plastic packaging to reduce plastic pollution. Unfortunately, APR is deeply concerned that the proposed definition of detachable components under the SB 54 revised rules (released August 2025) will treat all components as distinct parts, and not as part of the base packaging. This will lead to lower recycling rates. **APR requests CalRecycle amend the definition of detachable**

component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging. This includes differentiating when the component is routinely removed by the consumer and routinely re-attached by the consumer prior to recycling.

PROBLEM:
If all plastic components are put in separate EPR fee categories than the base plastic packaging, this will
• Conflict with design standards and best practices
• Lower recycling rates
• Distort the producer fees
• Create more consumer confusion
• Promote poor design choices
Examples of plastic components on plastic packaging The following table identifies common examples of how plastic components are used by consumers and how the consumer may recycle these components. The components in the green rows are commonly recycled today as part of the base packaging. In other cases, components are more likely to be recycled separately from the base packaging. There are still some cases in which it is unclear if there is sufficient data to know how consumers are recycling these components.
Examples of plastic components on plastic packaging and how they are commonly recycled by the consumer*
The above examples illustrate that there are many common plastic packaging components that are recycled today along with the base packaging. **It is critical that the Covered Material Categories reflect how consumers are actually recycling the products.** This is why the definition of detachable components must differentiate when components are attached or re-attached by the consumer for recycling.

CONCERN 1: CONTRADICTS BEST PRACTICES OF DESIGNING COMPONENTS TO BE RECYCLABLE WITH ENTIRE PACKAGE
Plastic components can and should be designed to be recyclable when attached or reattached to the base packaging. CalRecycle already recognizes the importance of product design for plastic packaging in SB 54. Further, SB 343 (Allen, Chapter 507, Statues of 2021) specifically references the APR Design® Guide as the tool to address how components affect the recyclability of plastic products:

PRC 42355.51: *"(3)A product or packaging shall not be considered recyclable in the state unless the product or packaging meets all of the following criteria, as applicable: (A) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers…"*

Statute requires producers to be compliant with the APR Design® Guide because the Design® Guide evaluates components as part of the entire packaging. See the diagram below to demonstrate how the APR Design® Guide assesses all the product design

features including components, inks, colors, sizes, additives, and more. This means it would be contradictory for CalRecycle to use the current definition of detachable components because it would classify all components as distinct parts when best practices look at these components as part of the base packaging. **This current definition is at odds with the leading design standards already recognized in California law.** The definition of detachable component must recognize that some components are successfully recyclable and recycled as part of the base packaging.

CONCERN 2: LOWERS RECYCLING RATES

In addition to the examples in the chart on page two, here are two common ways plastic components can be effectively recycled as part of the plastic product when properly designed for recyclability.

Example 1: Caps on plastic bottles. APR's model bale specs have endorsed caps on bottles since 2011. APR Design standards ensure that the caps can either be separated from bottles during the recycling process and recovered for recycling (e.g., caps on PET bottles), or are sufficiently compatible with the main bottle packaging (e.g., caps on HDPE bottles). Please see more information on caps in the plastics recycling process here. Data shows that California consumers are in fact putting caps back on the bottles. In 2025, the PET Recycling Corporation of California (PRCC) conducted a bale sort that found that over 78% of bottles collected through the CRV program had the cap attached, and 57% of bottles processed at MRFs had caps on bottles prior to baling.1

Example 2: Design-compatible pumps and sprayers. Pumps and sprayers often contain a small metal spring that is very problematic to sort out during the plastic recycling process. APR's Design Guide recommends plastic-only pumps and sprays, and there are over 60 variations of APR approved designs for sprayers and pumps that a company can use to ensure the entire container and pump/sprayer are fully recyclable. Proper design eliminates the need for the consumer to remove any pump or sprayer, and instead, allows the consumer to simply put the entire container in the recycling bin. Plastic recyclers can then fully recycle the container and pump, leading to higher recycling rates.

CONCERN 3: DISTORTS EPR FEES

The statute requires the PRO to set fees that reflect the *"Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material…."* This means producer fees, as based on the Covered Material Categories (CMCs), are required to reflect the actual costs of recycling and should reflect how plastic components are currently managed. For example, plastic caps on PET plastic bottles are collected and recycled today as part of the PET bottles. The costs collect and sort PET bottles are based on recycling all of the components together as a single unit. Similarly, the plastic reclaimers' costs to recycle a bale of PET bottles include the routine operational steps of separating the caps for recycling, along with any other non-PET "floatable" material. To base the EPR fees on the actual costs, the PRO must consider how products are actually recycled, which means differentiating between

components that are attached or re-attached for recycling. **Treating attached and re-attached components as part of the entire packaging unit is the most accurate reflection of the actual recycling costs of managing these components based on how they are recycled today.**

CONCERN 4: INCREASES CONSUMER CONFUSION

When all the attached or re-attached plastic components are designed to be recyclable with the product, recycling is easier for California residents. One of the overarching principles of SB 54 is to streamline, standardize, and simplify plastics recycling for residents to increase participation. This means **moving toward a future where there is less onus on the resident to intentionally remove any plastic components prior to recycling.** The role of the resident is to simply put the plastic package into the recycling bin, and then, with proper packaging design, the full product can be effectively recycled into new products. If components are all considered separately, then it may lead to more cases of when the resident is instructed to remove parts for recycling. This moves in a contrary direction to the statute goals. Components that are already recyclable when attached or re-attached should be incentivized, not treated the same as components that must be removed and recycled or disposed separately. There are too many nuances around how components are handled by consumers and how they flow in the recycling to simply set one baseline for all materials. **APR strongly recommends CalRecycle differentiate between component types in its definition and CMC guidance and incentivize those that can be recycled as part of the base package.**

CONCERN 5: PROMOTES POOR DESIGN CHOICES

APR anticipates several significant problems caused by charging EPR fees based on separate components with two examples provided here:

Scenario 1: Counting separate components may result in larger lids that use more plastic

If a producer must consider the screw-on lid as a separate and distinct component, then the producer may need to design the lid to be recycled separately from the container. Since smaller format plastics are more challenging to recycle, the producer would be incentivized to make the lid larger so it could be more effectively sorted by the MRFs. For example, a plastic jar lid (e.g., peanut butter jar) could be expanded to 3” or 4” width, or increased in height to 3” or more, to increase recyclability as a standalone component. This change in lid size will increase the amount of plastic being used in product design, which is contrary to the statutory goals.

Scenario 2: Moving to metal caps will result in less recycling. If the plastic cap is considered a separate category and has a different fee than the plastic container, then producers will look for ways to reduce their fees on the cap itself. Because metal typically has lower EPR fees than plastics, producers would have a financial incentive to move toward metal caps. While this might *sound* like a good way to reduce the number of plastic components, it has many unintended consequences. Metal components are the number one contaminant on PET containers. Small pieces of metal are extremely problematic in the plastic recycling system because they are extremely challenging to separate and degrade the quality of the recycled content. If more companies move to metal caps, it will have several negative impacts, including less recycled plastic and

lower quality of recycled content. In addition, small metal caps are challenging to recycle because of their size and because they contain a plastic lining on the inside of the cap. By contrast, plastic caps are recyclable today on bottles. Moving toward more plastic-lined metal caps would be a huge step backward and would create more problems rather than solve problems.

Moving forward
APR recognizes that one of the goals of SB 54 is to reduce plastic waste from small components, and the subsequent need to quantify the number and types of plastic components. However, the goal to count all components should not undermine recycling efforts, and we believe there is a way for the state to set the definitions to both quantify the number of components and ensure components are effectively recyclable and recycled.
APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging.

Response to B-11-11

CalRecycle rejects this comment for the reasons stated in response to comment O-39-5.

Comment B-11-12

Appendix 2

P&G Proposed Edits to Formal Proposed Draft Regulations

Proposed revisions shown in red font.

OTC Drug Exclusion (Section 18980.2(a)(6))

Section 18980.2. Categorically Excluded Materials
(a) The following are not covered material:

[…]

(6) Packaging for medical products. “Medical products” means products that are “drugs,” as defined pursuant to paragraph (5), that do not require a prescription. ~~and satisfy at least one of the following criteria:~~
~~(A) They are neither “cosmetics,” as defined in subsection (i) of section 321 of Title 21 of the United States Code, nor “soap,” as defined in section 701.20 of Title 21 of the Code of Federal Regulations.~~

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

Explanatory note: This edit excludes only products that have a Drug Facts panel, per the definition of medical products (21 U.S.C. § 321(g)) included in SB 54 statute. This does not exclude cosmetics that are not OTC drugs because pure cosmetics do not have a Drug Facts panel. Pure cosmetics that are not drugs remain in scope.

Detachable Components – Actual Recycling Rates and Recyclability (Section 18980.1 and Section 18980.3)

Section 18980.1. Definitions

[…]

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

(A) "Component," with respect to covered material, means a covered material item that has no physically distinct subparts, or a piece or subpart of a covered material item, if the piece or subpart is distinct with respect to its composition or function or is otherwise physically distinct from other pieces or subparts. "Item" is defined in paragraph (12).
(B) For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached, unless such component is designed to be reattached before disposal.

(C) A "detachable component" is one that may be completely detached from all other components or material, is not designed to be reattached before disposal, and is either of the following:

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

(ii) Typically or necessarily detached through ordinary usage by the consumer and is not designed to be reattached before being discarded~~, regardless of whether the component is discarded attached to the other components~~.

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

(E) The term "separable and distinct material component," as stated in the definition of "packaging" in subdivision (s) of section 42041 of the Public Resources Code, means a component, as defined in this subdivision, that is not the good being packaged but rather is the covered material serving the functions of packaging, as set forth in that definition.

Section 18980.3.2. Methodology for Recycling Rate Determination

[...]

(d) Recycling rate shall be calculated for each covered material category, except as established in subdivisions (f) and (g).

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

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

(3) If the Department determines that a recycling rate can be calculated for a group of components representing more than one covered material category and that a recycling rate cannot be calculated separately for a covered material category in such group, then the recycling rate of the group shall be used for each covered material category in the group for which an individual recycling rate cannot be calculated.

Compliance Measurement Period for Source Reduction (Section 18980.9.1)

Section 18980.9.1. Annual Reports

[...]

(d) For the PRO, the annual report shall additionally include:
(1) In the second phase of the annual report, as described in subdivision (c) of section 18980.6.5, fee schedule amendments pursuant to subdivision (e) of section 42053 of the Public Resources Code as a result of adjustments, including calculations for malus fees or credits.

(2) In its first phase of the annual report, as described in subdivision (b) of section 18980.6.5, the following information with respect to source reduction that is required by January 1 of 2027, 2030, and 2032, under subdivision (a) of section 42057 of the Public Resources Code:

(A) Percentage of reduction across all participant producers achieved during the applicable calendar year 2027, 2030, or 2032, respectively, based on producer source reduction reporting pertaining to calendar year 2027, 2030, or 2032, to determine the PRO's compliance with its source reduction plan and the requirements of subdivision (a) of section 42057 of the Public Resources Code.

(B) A qualitative assessment of the successes and challenges achieving source reduction goals, delineated by plastic covered material category, which ranks the relative frequency of use of each source reduction strategy.

(C) A quantitative assessment of source reduction achieved through reuse and refill strategies. The assessment shall assess the percentage of reduction in new material produced, detailing the reduction in the number and weight of plastic components through shifting to reusable or refillable packaging or food service ware and elimination of plastic components.

(D) Source reduction percentage by weight achieved through an alternative compliance formula pursuant to subclause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of section 42057 of the Public Resources Code and approved by the Department as part of the PRO's plan.

Source Reduction Adjustments, including for Sales Growth (Section 18980.8.3)

Section 18980.8.3. Source Reduction Adjustments

(a) Subject to the limitations of this section, a source reduction plan developed pursuant to subdivision (f) of section 42057 of the Public Resources Code may utilize adjustment factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO plan and must utilize adjustment factors and methods to allow producer reporting of material usage to be adjusted by units of sale to normalize for business growth over time, in each case for determining whether the PRO has met its source reduction obligation relative to the baseline established by the Department under subdivision (b) of section 42057 of the Public Resources Code.

Measurement of PCR Credit for Source Reduction (Section 18980.3.4)

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

[...]

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

(1) That the formula will accurately and reliably assess the reduction, by weight, in the use of virgin plastic through incorporation of postconsumer recycled content. To measure source reduction, it will ~~compare~~ measure the amount of postconsumer recycled content, by weight, used ~~to the amount used~~ in the ~~2023~~ relevant reporting calendar year and count such amount as the amount of virgin plastic that was source

reduced. The plan shall include a detailed description of the formula, including all assumptions, estimates, and supporting information.

Physical Recycling (Section 18980.4.1)

Section 18980.4.1. End Market Identification

[...]

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

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

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

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

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

Malus Fees for Covered Materials Containing Prop 65 Chemicals above Established Exposure Levels (Section 18980.6.7.)

Section 18980.6.7. Eco-Modulated Fee and Fee Schedule

[...]

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that

contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code at levels that would expose consumers above the respective exposure levels (No Significant Risk Levels/Maximum Allowable Dose Levels) and via the route of exposure of concern established by the Office of Environmental Health Hazard Assessment.

Response to B-11-12

Comment rejected. This comment sets forth the proposed changes that correspond to the preceding portions of the commenter's submission. Each proposed change has been addressed in response to those preceding portions.

B-12: John Caturano GGC / On Behalf of: Plastic Forming Enterprises LLC (John Caturano)

Comment B-12-1

Comment on SB 54 Draft Regulations – ISO/IEC 17025 Accreditation for Third-Party Recyclable Packaging Testing
To ensure credibility and consistency in the data used to implement SB 54, it is strongly recommended that all testing—whether for compostable or recyclable packaging materials—be conducted by independent third-party laboratories accredited to ISO/IEC 17025. As California moves toward ambitious regulatory expectations, validation through credible, science-driven data, by trusted independent third-parties is essential.

While the current draft regulations appropriately reference ISO/IEC 17025 accreditation for compostable materials and recyclability packaging testing, there is not yet a requirement to use a third-party testing facility. This creates a critical gap in technical verification and data reliability.

Independent third-party ISO/IEC 17025 accreditation ensures that laboratories maintain robust quality systems, calibration traceability, and the plastics expertise necessary to generate credible data for end-market determinations. That said, not all testing methods for determining recyclability will fall within a laboratory's ISO/IEC 17025 scope. To ensure the production of reliable data, those conducting the testing should remain independent from the product being assessed. This change will help prevent self-serving or unverified recyclability claims, reinforce SB 54's data-driven framework, and support transparent, technically sound decision-making aligned with California's circular economy goals.

Response to B-12-1

Comment rejected. The commenter's request is that "those conducting the testing should remain independent from the product being assessed." The proposed regulation, however, already guarantees such independence. See section 18981(b)(1) and (2).

B-13: RJ Schinner Co., Inc (Joseph Siekierski)

Comment B-13-1

Dear Sirs/Madams:

By this letter, R.J. Schinner Co., Inc. ("Schinner") is responding to the request from the California Department of Resources Recycling and Recovery ("CalRecycle") for public comments on the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "Act") Permanent Regulations. Schinner is a wholesale redistribution company serving the foodservice, lodging, grocery, janitorial supply, and office supply markets, and distributes products into the state of California. Because its business operations are potentially subject to the Act, Schinner has an interest in CalRecycle's rulemaking activities associated with the Act.

Accordingly, Schinner submits the following comments:

> **Response to B-13-1**
>
> Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it does not set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-13-2

1. The term "purchaser" is used in the Act at section 42041(w)(5) and in the proposed regulations at section 18980.2.1(a)(4)(B). This term should be defined in section 18980.1. For example, it is unclear whether a "purchaser" is the same as other terms used, such as "end user," "consumer," or any other entity in the supply chain that may purchase a product (such as a "retailer" or "wholesaler"). Given the complex nature of distribution in supply chains, it is very important that the language used in the regulations is precise and recognizes that products often end up being "purchased" by an entity that does not use the product (or dispose of the packaging), but instead sells that product to another person or entity—and the location of that subsequent transaction may be unknown to the entity that first sells the product into the state.

> **Response to B-13-2**
>
> Comment rejected. The term "purchaser" has obvious, plain meaning (one who purchases) and is only used in an explanatory parenthetical listing examples of how items can be purchased. Moreover, the context makes clear that the "consumer" or "end user" at issue is the person (whether natural person or an entity) that uses the items that might be refilled or reused. Lastly, because the context is the application of the reuse/refill criteria in Public Resources Code section 42041(af), it is immaterial that the supply chain might involve intermediate transactions by entities that might not know the precise fate of the

items they purchase or sell. In every event, the criteria for whether those items are reusable or refillable are applied in context of their use and reuse/refill.

Comment B-13-3

2. The term "consumer" should similarly be defined within 18980.1 and differentiated from the terms "purchaser," "user," and "end user." The term "consumer" is defined in 18980.2.1(a)(1)(B), but the application of the definition is limited to that subdivision.

Response to B-13-3

CalRecycle rejects this comment for the reasons stated in response to comment B-13-2.

Comment B-13-4

3. The terms "user" and "end user" should be defined within 18980.1 and differentiated from the terms "purchaser" and "consumer." To the extent that "user" and "end user" are meant to refer to the same thing, only one of those terms should be used.

Response to B-13-4

CalRecycle rejects this comment for the reasons stated in response to comment B-13-2.

Comment B-13-5

4. The term "covered product" is used in the Act at section 42041(w)(2). The definition of "product" at section 18980.1(a)(18) should clarify whether it also applies to the use of the term "covered product."

Response to B-13-5

Comment rejected. The commenter erroneously asserts that secion 42041(w)(2) uses the term "covered product" and, on that basis, requests that the regulation provides clarity regarding it. While the first-enacted version of 42041(w)(2) used that term, it was removed in subsequent legislation, so no change is warranted.

Comment B-13-6

5. Sections 18980.6(b) and (c) allow the PRO to dismiss or refuse producer participation. These provisions are an improper delegation of CalRecycle's authority to a private entity. A producer's inability to participate in a PRO, due either to PRO dismissal or refusal, effectively prohibits the producer from lawfully selling or distributing products in the state of California, with no reasonable alternatives available to comply with the law and no recourse through administrative hearing or judicial review. As the agency imbued with authority to implement the Act, CalRecycle alone should adjudicate, through a transparent process, whether a producer is permitted to participate in the program and sell or distribute products in or into California. The PRO should not have the authority to refuse or dismiss producer participation.

Response to B-13-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, and no further change is necessary to the implementation or enforcement of the Act. PRC section 42051(b)(1) provides that a producer cannot sell, offer for sale, import, or distribute covered materials in the state on or after January 1, 2027, unless the producer "is approved to participate in the plan of a PRO that is approved by [CalRecycle.]" PRC section 42051(b)(1) does not require CalRecycle to determine when producers are approved for participation in the PRO's plan. Sections 18980.6(b) and (c) of the proposed regulations implement this requirement by establishing a heightened standard for when a PRO will be allowed to dismiss or refuse to accept a producer from participating in its plan. As described in those sections, the heightened standard includes requirements for good cause based on substantial noncompliance and good faith effort by the PRO to resolve the good cause. Consistent with Article 13 of these proposed regulations, any failure by a PRO to comply with this heightened standard will constitute a violation by the PRO and may subject the PRO to penalties. Furthermore, pursuant to PRC section 42051(d), the PRO will be required to notify CalRecycle within 30 calendar days of the date a producer no longer participates in the PRO's approved plan. CalRecycle will also have the opportunity to demand records and conduct inspections as it deems necessary to determine a PRO's compliance with the requirements of sections 18980.6(b) and (c). Therefore, the proposed regulations already provide CalRecycle with sufficient opportunity to oversee and enforce the PRO's dismissal or refusal of participant producers. Moreover, even if a PRO properly dismisses or refuses to accept a participant producer, that producer will have the opportunity to comply with the Act as an Independent Producer, consistent with PRC section 42051(b)(2) and section 18980.5.1 of the proposed regulations. Finally, nothing in the Act or these proposed regulations purports to affect or eliminate any opportunity for judicial review that might be available to a producer under the law. As such, no change is necessary.

Comment B-13-7

6. Section 18980.6.1 provides that the PRO shall prepare and submit a producer responsibility plan on or before either April 1, 2026, or June 15, 2026 (under certain conditions). Upon submission, the plan will then be subject to review and public comment prior to approval; this comment and approval process will likely take several months, in the very least. The contents of this plan will provide producers with critical details about CAA's process and fee schedule, as prescribed in section 18980.6.7. However, California's approved PRO, Circular Action Alliance ("CAA"), is requiring producers to register, report supply data, and pay early fees prior to the existence of even a draft plan—let alone an approved plan. Without the information to be contained in this plan, producers cannot make informed decisions about whether to participate in the PRO, and yet they are being forced to do so by the requirements imposed by CAA. CAA should not be permitted require producers to submit supply data and fees prior to the approval of its producer responsibility plan. All producer compliance dates should be postponed until after CalRecycle has approved the PRO's plan.

Response to B-13-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and the recommended changes are not necessary to the implementation of the Act. First, to the extent this comment recommends the postponement of PRO-initiated compliance deadlines, no response is necessary because such recommendations do not suggest changes to the proposed regulations or raise objections related to the rulemaking process. Rather, these recommendations concern deadlines that have been established by CAA, not CalRecycle, outside of the rulemaking process. Second, to the extent this comment recommends postponing the requirement for producers to pay fees to the PRO prior to the approval of its producer responsibility plan, no change is necessary or appropriate for the reasons specified in response to comment B-35-4. Finally, to the extent this comment recommends postponing the requirement for producers to report supply data to the PRO prior to the approval of its producer responsibility plan, no change is necessary or appropriate. Consistent with the overall statutory framework and its authority under the Act, the initial PRO plan must be based on producer supply data. This requirement is inherent in the relevant statutory provisions, including, among others, PRC sections 42051.1(d), (h), and (j), which require producer supply data to reasonably inform initial determinations concerning producer fees, source reduction data, and the budget. If a producer declines to provide the PRO with supply data, or if a producer discontinues its participation in a PRO following approval of the PRO's plan, the producer can apply to comply with the requirements of the Act as an Independent Producer under PRC section 42051(b)(2) and section 18980.5.1 of the proposed regulations. Therefore, the proposed regulations already strike an appropriate balance between ensuring the PRO is able to receive all information necessary to develop its initial plan and providing producers with opportunities to decline to provide the PRO with supply data or participate in the PRO's plan if desired.

Comment B-13-8

7. Section 18980.6.4 does not provide for public comment on amendments to the PRO's producer responsibility plan. This is in contrast to section 18980.6.3, pertaining to plan updates, which does allow for public comment. Section 18980.6.4 should be revised to allow for public comment in order to be consistent with the Act. Section 42051.2(e)(1) of the Act provides that the process for amendments to the producer responsibility plan should be the same as for the updated plan.

Response to B-13-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.2, 42060, and 42063, and the suggested change is not necessary to the implementation of the Act. PRC section 42051.2(e) only requires the PRO to make specified proposed

plan amendments available for review by the advisory board and CalRecycle; it does not require the PRO to make such proposed plan amendments available for public review or comment. Section 18980.6.4(b) of the proposed regulations implements this provision by specifying that a PRO must include a summary of all comments received from the advisory board and identify revisions, if any, made in response to the comments. Furthermore, consistent with PRC section 42051.2(e), section 18980.6.4(c) of the proposed regulations establishes a process and standards by which CalRecycle will review advisory board comments as summarized by the PRO and determine whether the PRO has properly considered and incorporated such comments into its proposed plan amendments. No further change is necessary to implement the requirements concerning comments on proposed plan amendments as set forth in PRC section 42051.2(e).

Comment B-13-9

8. Section 18980.6.5 requires the PRO to prepare and submit Annual Reports, and notes that the first report should be submitted no later than July 1 of each year after CalRecycle has approved a PRO Plan. However, given the ambiguity around the anticipated timing of CAA's approved PRO Plan, it is unclear when the PRO's plan will be approved. The timing of the Annual Report therefore should not be tied to the approval of the PRO plan, especially if the PRO is permitted to collect fees from producers in advance of the plan's approval. The PRO should be required to submit Annual Reports to CalRecycle detailing its use of finances beginning in its first year of operation—or, in the very least, in the year it begins collecting fees from producers.

Response to B-13-9

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.2, 42051.3, 42060, and 42063, and no change is necessary to the implementation of the Act. PRC section 42051.3(a) requires a PRO to annually submit to CalRecycle an annual report and budget that describes how the PRO is implementing the approved plan. Section 18980.6.5 of the proposed regulations implements this provision by providing that this annual report requirement will commence in the year after the plan has been approved or conditionally approved. This interpretation is necessary and reasonable because the plan must first be approved before the PRO can describe how it is "implementing the approved plan," as required by PRC section 42051.3(a). Following the plan's approval, the PRO will be required to submit annual reports that detail its use of finances, as required by PRC section 42051.3 and 18980.6.5 of the proposed regulations. No further change is necessary.

Comment B-13-10

9. Section 18980.6.5 does not allow for public review and comment of the PRO's Annual Report. The opportunity for public comment is crucial and should be added to this section. Moreover, the Annual Report must be unredacted in order to achieve complete transparency regarding the PRO's fee setting and expenditure of funds.

Response to B-13-10

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.3, 42060, and 42063, and no changes are necessary to the implementation of the Act. PRC sections 42051.3 and 42063 establish the process and requirements governing the submission and approval of a PRO's annual report. In contrast to statutory provisions governing the submission and approval of a PRO's plan and plan updates (PRC section 42051.2), which do provide an opportunity for public comment prior to CalRecycle's approval, PRC sections 42051.3 and 42063 do not establish any requirement for public comment on proposed annual reports before CalRecycle's approval. Section 18980.6.5 of the proposed regulations implements PRC sections 42051.3 and 42063 by adding further specificity to the process and requirements governing the submission and approval of a PRO's annual report without adding any public comment requirement. No further change is necessary to give effect to PRC sections 42051.3 and 42063. Moreover, to the extent this comment recommends requiring that the annual report be unredacted to achieve complete transparency, no change to the proposed regulations is necessary. Nothing in the Act or proposed regulations provides that an annual report submitted to CalRecycle may be redacted or will lack complete transparency. Rather, PRC section 42063(c) requires CalRecycle to withhold certain producer-specific financial, production, or sales data included in an approved annual report from being released to the public. That section provides that approved annual reports are public records, except that financial, production, or sales data reported to the department by the PRO is not a public record for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. Therefore, the proposed regulations are consistent with the Act's requirements and limitations concerning the transparency of annual reports.

Comment B-13-11

10. Section 18980.6.6(b) should not permit the PRO to redact financial information. Complete, transparent financial data is critical for meaningful oversight by both producers and CalRecycle.

Response to B-13-11

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060 and 42063, and no change is necessary to the implementation of the Act. Section 18980.6.6(b) of the proposed regulations does not purport to permit the PRO to redact financial information from documents it submits to CalRecycle. Rather, it instructs the PRO to identify to CalRecycle any portions of its document submittals that should be withheld from disclosure to the public because such portions contain producer-specific financial, production, or sales data. This is necessary for

consistency with the requirement for CalRecycle to withhold from public inspection such information, as set forth in PRC section 42063(c). Therefore, no further change is necessary or appropriate.

Comment B-13-12

11. Section 18980.6.7(c) permits the PRO to switch from collection of "early fees" to collection of supply-based fees if it determines that it has "sufficient data" to do so. The regulations should clarify more specifically what is meant by "sufficient data" and how the sufficiency of data should be measured.

Response to B-13-12

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule according to the timeline established in PRC section 42053(b). PRC section 42053(b) provides that, during the first two years of operation and during the preparation of the PRO plan, the PRO will base the producer fee schedule on estimated costs of implementing the plan, operating costs, the cost of completing the needs assessment, and the costs to reimburse the department. PRC section 42053(b) further provides that, in the third year and beyond, the PRO must base the producer fee schedule on the factors specified in PRC 42053(c), including fees that are adjusted using malus fees or credits. Section 18980.6.7(c) of the proposed regulations implements this timeline by clarifying that the PRO may establish a producer fee schedule reflecting eco-modulated fees any time following approval of the initial plan if the PRO determines it has sufficient data to do so. The timelines in PRC section 42053(b) and sections 18980.6.7(a) and (b) of the proposed regulations are designed to protect against the assessment of eco-modulated fees before the PRO has sufficient data to establish such eco-modulated fees. PRC section 18980.6.7(c) provides that, once sufficient data exists, and after approval of the initial plan, the PRO may begin charging eco-modulated fees as part of the estimated costs of implementing the plan under PRC section 42053(b). Because the PRO is given the responsibility and discretion to develop and establish eco-modulated fees under PRC section 42053, section 18980.6.7(c) appropriately extends the PRO the opportunity to determine when it has sufficient producer data to establish such eco-modulated fees. Therefore, section 18980.6.7(c) is consistent with the producer fee framework established in PRC section 42053 and no further change is necessary.

Comment B-13-13

12. Section 18980.6.8(e) requires access to records within ten (10) calendar days. This is overly burdensome for many businesses, which often rely on a small team to collect and maintain this data. The time permitted for access to records should be extended to thirty (30) calendar days.

Response to B-13-13

CalRecycle rejects this comment. CalRecycle rejects this comment to the extent it recommends changing "10 calendar days" to "30 calendar days" because such change is not necessary to the implementation or enforcement of the Act and would cause undue delay to CalRecycle's ability to carry out its investigative functions and verify compliance with the Act. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code. Section 42051.1(m) already requires all records to be maintained such that they are reasonably accessible to CalRecycle upon request. Consistent with the record maintenance protocol of section 42051.1(m) and section 18980.6.8(d) of the proposed regulations, ten calendar days provides an entity with sufficient time to assemble and provide CalRecycle with the requested records that are already being maintained.

Comment B-13-14

13. PROs should not be permitted to require binding arbitration as the sole method of dispute resolution with producers. The regulations should address this point specifically. In section 18980.8.(h), for example, the regulations outline an approved dispute resolution process as between the PRO and local jurisdictions and recycling services providers, and further note as follows in Section 18980.8(h)(6): "Nothing in this subdivision shall be construed as empowering the PRO or Independent Producers to require local jurisdictions or recycling service provides to submit any matter to mediation or arbitration." A similar provision is necessary to govern the resolution of disputes between the PRO and producers. CalRecycle should prohibit CAA from requiring producers, through CAA's non-negotiable participant producer agreements, to be subject to binding arbitration with no possibility of judicial review as the sole means of dispute resolution.

Response to B-13-14

Comment rejected. PRC section 42060(a) requires CalRecycle to "adopt regulations necessary to implement and enforce this chapter[.]" The proposed regulations fulfill that mandate through the provision cited by the commenter, section 18980.8(h) of the proposed regulations, which implements the requirements of section 42051.1(g) of the Act concerning the resolution of cost disputes between a PRO and a local jurisdiction or a recycling service provider. Even in that context, the PRO is not given any authority to require any party to submit to binding arbitration. Also, no parallel provision exists in the statute or the proposed regulations concerning disputes between a PRO and producer. As such, no further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment B-13-15

14. Pursuant to sections 18980.1(a)(22)(C) and 18980.10.1(b), producers that are members of a PRO (and therefore are not Independent Producers) may choose not to submit reports to the PRO and instead submit reports directly to CalRecycle. However,

the process for this option is not further elaborated beyond two brief references. The regulations should either provide more detail about how this option would be effectuated or direct the PRO to develop a process within its plan. Moreover, producers should be privy to the details of this option before being forced to submit supply data and fees to a PRO.

Response to B-13-15

Comment rejected. A regulation is not required for establishing every ministerial detail of how a report may be submitted directly to CalRecycle. And, in any event, section 18980.10.1 establishes both substantive and procedural requirements relating to report submissions and unambiguously establishes that its requirements apply to reporting entities. Also, section 18980.1(a)(22)(C) clearly states that a producer becomes a "reporting entity" merely by not providing data to the PRO. At that point, the procedures set forth in 18980.10.1 apply to the producer directly. Lastly, no change is required to ensure that, as the commenter suggests should be required, a PRO plan establish a process for producers to "effectuate" the option of submitting reports directly to CalRecycle. The PRO already has the general obligation under Public Resources Code section 42051.1(m) to implement measures to ensure that producers comply with the Act, including by maintaining records demonstrating such compliance. A PRO cannot fulfill that obligation unless it establishes procedures for producers to submit data to it or notify it that they are complying by reporting directly to CalRecycle.

Comment B-13-16

15. Section 18980.13(a) does not indicate that notice will be given to an entity prior to entry for an inspection. Reasonable notice should be included in this provision.

Thank you for the opportunity to submit these comments on the Act's proposed regulations.

Response to B-13-16

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act. PRC section 42080(a) authorizes CalRecycle to conduct investigations, including through inspections and audits, to determine whether entities are complying with the Act. Section 18980.13(a) of the proposed regulations implements this statutory provision by specifying the nature and methods of such investigations. While notice is not required by PRC section 42080(a), CalRecycle may give notice prior to entry for an inspection where appropriate. Additionally, PRC 42081(a) already provides for an adequate period of notice before any penalties begin accruing with respect to a violation of the Act. Therefore, no further change to the proposed regulations is necessary.

B-14: Repurpose, Inc. (Lauren Gropper)

Comment B-14-1

I'm writing as the Founder & CEO of Repurpose, a California C-Corp with headquarters in Los Angeles, California. We have 25 employees and have been in business for 15 years. We manufacture and distribute compostable household goods through 15,000 retailers nationwide including Costco, Target, Amazon, Kroger and Albertsons. California's proposed law will have a significant negative impact on our Company, raising costs and harming markets nationwide, as well as hurting consumers that want clearly labeled sustainable products and packaging.
Repurpose is not new to sustainability, it's in our DNA.
For over a decade, we've:

Designed PFAS-free, non-toxic, certified compostable products across multiple household categories.

Substituted petroleum-based single-use plastics with clean, plant-based materials.

Advocated for consumer transparency and the elimination of greenwashing in the marketplace.

Built a strong internal data foundation to classify, measure, and verify packaging components across our entire product catalog.

Our actions are already aligned with the core intent of SB 54: reduce plastic pollution, improve end-of-life outcomes, and shift responsibility upstream to producers. Though the SB 54 regulations are not yet finalized, Repurpose has proactively:

Completed a full packaging audit: Every SKU's packaging material, weight, recyclability/compostability, and labeling has been tracked and mapped.

Maintained PFAS-free product design: Our commitment to safe materials positions us to comply not only with SB 54 but with global regulatory trends.

Built a scalable compliance framework: We've begun working with tech partners to streamline Extended Producer Responsibility (EPR) data reporting and cost modeling across jurisdictions.

Engaged early in rulemaking: Repurpose has reviewed and submitted feedback on draft regulations, tracking shifts that affect compostables in particular.

Below please find our comprehensive comments:

Response to B-14-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-14-2

Section 18980.1 — Definitions

At Repurpose, we appreciate the revisions CalRecycle has made to the definitions of "alternative collection" and "food service ware." The inclusion of mail-back and extended logistics programs under "alternative collection" is a positive and realistic recognition of how forward-thinking companies are working to expand access to responsible disposal pathways. Likewise, including food-associated items like cup sleeves under "food service ware" shows a more complete understanding of real-world usage and disposal behavior.

However, we strongly urge CalRecycle to further revise the definition of "plastics or polymers" and create a standalone definition for "polymers." These two terms are not interchangeable — yet without a clear distinction, the proposed regulations unintentionally widen the exemption outlined in PRC 42356.1(d), which was meant to be narrowly applied.

As a company that designs certified compostable products using responsible materials — including trace polymers that meet ASTM D6400 and D6868 — we know firsthand how rigorous these standards are. Compostable polymers are carefully tested to ensure biodegradation, safe disintegration, and non-toxic breakdown. To lump these in with conventional plastics undermines the science, misleads consumers, and threatens the integrity of the entire system — from field to soil.

If CalRecycle does not address this definition, it will create a loophole that penalizes responsible brands and invites confusion, greenwashing, and contamination in composting streams. We recommend the adoption of ASTM D883's definition of "polymer" and that the term "plastics or polymers" in this regulation be amended to reference this.

Response to B-14-2

CalRecycle rejects the commenter's suggestion, which is vague because it states that the regulation should incorporate "ASTM D883's definition of 'polymer'" but does not provide that definition nor explain why it is more appropriate than the definition provided in 18980.1(a)(16). Moreover, the commenter implies that proposed regulation treats the words "plastic" and "polymer" as interchangeable, but that is not correct. Section 18980.1(a)(16) does not purport to define each term separately. Rather, it interprets the entire phrase "plastic or polymers," as that phrase is used in Public Resources Code section 42356.1(d). In doing so, CalRecycle reasonably understands the Legislature's intent in using the word "plastic" as a reference to items made

entirely of plastic because that is the ordinary, layperson use of that term. In contrast, in including the technical word "polymer," it used a word that does not have a commonly understood meaning among consumers (i.e., lay persons), so it must be interpreted in light of the context in which it appears. In that context, the Legislature could not have intended to refer to all polymers, which would include molecules that make up fiber; that result would be absurd because the exemption under section 42356.1(d) is for fiber products to begin with; fiber products would be disqualified for their own exemption. Accordingly, CalRecycle reasonably understands the Legislature's to have intended the entire phrase "plastic or polymers" to capture both "plastic" in its common, layperson's sense and plastic molecules that may not necessarily be noticeable by consumers but fall within the definition of "plastic." Because the Legislature specifically included a definition of that term in SB 54, incorporating it here is appropriate because it ensures a consistent, statute-wide application of the definition of "plastic," consistency that the commenter's suggested change would disrupt.

The commenter's position also appears to be nonsensical. While it is difficult to discern that position without the benefit of the definition the commenter desires, it appears to be that "plastic or polymers" should be interpreted more narrowly by construing "polymers" not to include what the commenter refers to as "compostable polymers" that "are carefully tested to ensure biodegradation" (i.e., the regulations should not "lump [compostable polymers] in with conventional plastics"). At the same time, the commenter objects that the proposed regulations unduly "widen the exemption outlined in Public Resources Code 42356.1(d)." But narrowing the definition of "plastic and polymers" would not narrow the exemption under Public Resources Code section 42356.1(d). Instead, that change would expand the exemption by restricting the range materials that can be said to "incorporate plastic or polymers" (and thus would be ineligible for the exemption). If the commenter's assertion is instead that "polymers that meet ASTM D6400 and D6868" should be considered eligible for the exemption, that position is also patently nonsensical. It would mean that complying with the strictures of Public Resources Code section 42357 would make materials eligible for an exemption from them.

Lastly, concern over non-plastic polymers incorporated into wood (or other non-plastic fiber) food service ware items is misplaced because those items are, by definition, not covered material. And, with respect to any covered material, if items contain any synthetic polymers, with very limited exception, they would fail to satisfy the requirement in public Resources Code section 42357(g)(1)(B) (requiring materials to be allowable inputs under the National Organic Program).

Comment B-14-3

Section 18980.2.2 — Exclusion of Certain Types of Packaging

We support the clarification requiring brands to explain why no reasonable packaging alternative exists when seeking categorical exclusion. Innovation thrives under clear

incentives, and there are already compostable substitutes for many materials currently excluded. This change encourages continued movement toward safer, smarter design — which aligns with the intent of SB 54.

That said, we are deeply concerned with the proposed "de minimis" exclusion as it relates to compostables. In composting, even the smallest non-compostable component — by weight or volume — can persist as a contaminant. The real test is not what we can see or measure in a pile, but what happens under controlled lab conditions: biodegradation, disintegration, and toxicity.
ASTM D6400 and D6868 already give us the framework. Any allowance for "de minimis" components should only apply if the full product still meets these standards. Otherwise, we risk allowing products into the market that break down incompletely or introduce harmful residues into the soil. We urge CalRecycle to either remove compostables from the "de minimis" language or require full product compliance with ASTM standards in these cases.

Response to B-14-3

Comment rejected. The commenter requests special treatment for allegedly "compostable" components. The comment provides no evaluation of the criteria established in 18980.2.2(b) to explain why they would not be sufficient—that is, why they would not, as written, preclude the components of concern from qualifying as de minimis. The criteria—in particular, subparagraphs (A), (C), (D), and (E) of paragraph (2)—address the commenter's concerns. Moreover, nothing in the proposed regulations or the statutory de minimis exclusion affects application of California laws concerning labeling. Regardless of whether materials are considered "covered material" under CalRecycle application of the statute implemented by the proposed regulations, there is no "de minimis" exclusion for product labeling under Public Resources Code section 42357.

Comment B-14-4

Section 18980.4 — Responsible End Market Criteria

Repurpose is aligned with the principle that responsible end markets must benefit the environment and minimize risks to human and environmental health. Unfortunately, the current treatment of fiber and paper products in Section 18980.4(a)(4)(B) and (C) undermines that goal.

The proposed language doesn't require full biodegradation for these materials, despite SB 54's clear guidance. That's a problem — especially since some fiber and paper products contain synthetic polymers. If plastics must meet strict breakdown criteria, so should these.
We strongly recommend removing these provisions unless they are revised to require full degradation, consistent with ASTM D6400 and D6868. Anything less creates a dangerous inconsistency, and a missed opportunity to build a truly circular system.

We also support the use of ASTM D8618 and D8619 for evaluating composting facilities and recommend requiring these facilities to demonstrate — via field testing — the ability to process certified compostable products responsibly.

Response to B-14-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and the recommended changes are not necessary to the implementation or enforcement of the Act. The different standards in sections 18980.4(a)(4)(B) and (C) of the proposed regulations are appropriate and reasonable for the reasons specified in response to comment B-6-5. Moreover, the commenter's concern about the application of these standards in the context of synthetic polymers is misplaced for the reasons provided in response to comment B-14-2 elsewhere in this submission. To the extent this comment argues that the current standard in section 18980.4(a)(4)(B) is inadequate, see the response to comment O-75-12. To the extent this comment argues that the current standard in section 18980.4(a)(4)(C) is inadequate, no change is necessary. The standard of section 18980.4(a)(4)(C)—requiring biological decomposition and processing in a manner to produce a marketable product that complies with applicable standards—is reasonable, appropriate, clear, and consistent with CalRecycle's authority under PRC section 42041(ad). Moreover, as noted in the Final Statement of Reasons, this standard is necessary to ensure that all composting responsible end markets are subject to uniform requirements and produce compost that meets the quality standards necessary to be used in the marketplace. The recommended standard of full degradation is not necessary because fiber and paper fragments are not contaminants in the composting process and, even if they fail to fully decompose during processing, they are organic materials that continue to biodegrade after processing without presenting uncertain environmental and health risks. For similar reasons, and for the further reasons identified in response to comment O-83-5, the recommendation to incorporate ASTM standards for evaluating composting facilities and to require composting facilities to demonstrate, through field testing, the responsible processing of covered materials is not necessary. Both section 18980.4(a)(4)(B) and (C) already require facilities to process applicable materials in a manner consistent with the standards set forth in those sections and further require the resulting recycled organic product to meet standards necessary to be sold into the marketplace. No further demonstration is necessary to ensure facilities covered under sections 18980.4(a)(4)(B) and (C) process materials in a manner that is responsible and sufficient to satisfy the requirement under 18980.4(a)(4), consistent with PRC section 42041(ad).

Comment B-14-5

Section 18980.11.1 — Exemptions for Local Jurisdictions and Providers

We support the language requiring jurisdictions to demonstrate specific limitations before seeking exemptions. However, we encourage CalRecycle to require these

entities to issue an RFP before concluding that compliance isn't feasible. Technology and infrastructure are evolving fast — and assumptions about feasibility can often be disproven with the right partners.

Importantly, jurisdictions should not be allowed to exempt only certain compostable materials. Certified compostable products are tested under the same standardized conditions. Selective exemption introduces inconsistency and confusion that puts the entire category at risk.

Response to B-14-5

CalRecycle rejects this comment for the reasons provided in response to comment O-83-6. Furthermore, Public Resources Code section 42060(b) expressly requires CalRecycle to grant extensions when a recycling service provider establishes that compliance with section 42060.5(a) is not practicable for a specific identified covered material because of specific local conditions, circumstances, or challenges. Also, while the issuance of an "RFP" (presumably, a request for proposals relevant to fulfilling the requirements of Public Resources Code section 42060.5(a)) might be a useful tool in some cases to establish that compliance is not practicable, it would not be necessary in every instance, and in some instances it could be obviously futile. Imposing a blanket requirement for all applications would therefore create an undue and wasteful burden.

The commenter also requests that CalRecycle forbid exemptions from applying only to "certain compostable materials" because "[c]ertified compostable products are tested under the same standardized conditions." But there is no current requirement that a product labeled "compostable" be certified. Moreover, the commenter's implied assertion—that an exemption for certain materials necessarily is justified for others—need not be addressed in the proposed regulations because the merits of exemption requests, including the scope of granted exemptions, are necessarily a case-by-case matter. Lastly, local jurisdictions and recycling service providers are best suited for determining the necessary scope of exemptions they request, and Public Resources Code section 42060.5(a) only authorizes exemptions for covered material cannot that the local jurisdiction or recycling service provider cannot included in their collection and recycling programs.

Comment B-14-6

Accreditation Requirements for Third-Party Certification Entities
We support the adoption of ISO 17065 for compostability certifiers. It's a high bar, and that's a good thing. But it's not common today — which means time is needed for certifiers and manufacturers to adjust.

We support BPI's recommendation for a phased approach:

By Jan 1, 2028: Certifiers must be ISO 17065 accredited with testing from ISO 17025 labs or labs audited to that standard.

By Jan 1, 2031: All certificates for covered compostable products must reflect ISO 17065 accreditation.

CalRecycle must address this timeline explicitly to comply with the Administrative Procedures Act and ensure fair implementation.

Response to B-14-6

CalRecycle rejects this comment for the reasons provided in response to comment B-36-8.

Comment B-14-7

Finally, we reiterate the need to prohibit conflicts of interest, particularly ownership stakes in testing labs or composting facilities by certifying bodies. As of now, there is at least one national organization operating with potential conflicts in this space. Without strict and enforceable separation between certification, testing, and processing entities, the credibility of compostable labeling is compromised.

In conclusion, Repurpose is committed to creating products that are safe, circular, and scientifically sound. SB 54 has the potential to be a model for the nation but only if the details match the intent. We urge CalRecycle to uphold the spirit of the law by ensuring clarity, accountability, and scientific rigor across all definitions, exclusions, and end-market criteria.

Response to B-14-7

Comment rejected. The commenter requests that the proposed regulations prohibit conflicts of interest. Section 18981(b)(1) and (2) of the proposed regulations establishes that prohibition.

B-15: United States Bakery (Randi Wells)

Comment B-15-1

By this letter, United States Bakery ("U.S. Bakery") is responding to the request from the California Department of Resources Recycling and Recovery ("CalRecycle") for public comments on the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "Act") Permanent Regulations. U.S. Bakery is a manufacturer of baked goods based in Oregon and supplies its products into the state of California. Because its business operations are potentially subject to the Act, U.S. Bakery has an interest in CalRecycle's rulemaking activities associated with the Act.

Accordingly, U.S. Bakery submits the following comments:

The term "purchaser" is used in the Act at section 42041(w)(5) and in the proposed regulations at section 18980.2.1(a)(4)(B). This term should be defined in section

18980.1. For example, it is unclear whether a "purchaser" is the same as other terms used, such as "end user," "consumer," or any other entity in the supply chain that may purchase a product (such as a "wholesaler"). Given the complex nature of supply chains, it is very important that the language used in the regulations is precise and recognizes that products often end up being "purchased" by an entity that does not use the product (or dispose of the packaging), but instead sells that product to another person or entity—and that subsequent transaction may be unknown to the original manufacturer or the entity that first sells the product into the state.

Response to B-15-1

CalRecycle rejects this comment for the reasons stated in response to comment B-13-2.

Comment B-15-2

The term "consumer" should similarly be defined within 18980.1 and differentiated from the terms "purchaser," "user," and "end user." The term "consumer" is defined in 18980.2.1(a)(1)(B), but the application of the definition is limited to that subdivision.

The terms "user" and "end user" should be defined within 18980.1 and differentiated from the terms "purchaser" and "consumer." To the extent that "user" and "end user" are meant to refer to the same thing, only one of those terms should be used.

Response to B-15-2

CalRecycle rejects this comment for the reasons stated in response to comment B-13-2.

Comment B-15-3

The term "covered product" is used in the Act at section 42041(w)(2). The definition of "product" at section 18980.1(a)(18) should clarify whether it also applies to the use of the term "covered product."

Response to B-15-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-13-5, which is substantively the same as this comment.

Comment B-15-4

In establishing the producer determination, the Act at section 42041(w)(1) states that, as pertaining to a licensee, "the licensee of the brand" is a producer (if other criteria are also met). However, the wording in the regulations at section 18980.1.1(c)(1) is different: it provides that a producer is a person in the state who manufactures goods and either owns the brand or "is licensed to manufacture the goods." This inconsistency in wording between the Act to the regulations is confusing. Section 18980.1.1(c)(1) further states that "the licensee must have the legal right to use the brand or trademark on the goods in connection with manufacturing the goods and be entitled to be the only

person with such right in the state or in a subregion of the state." The inconsistency is further complicated by the inclusion of a different subsection, 18980.1.1(c)(3), which separately assigns the producer responsibility to "a licensee of the designated brand or trademark." Is CalRecycle intending to expand the scope of what it means to be a licensee with the language in (c)(1) and (c)(3)? If so, that intent should be clearly stated and explained in the regulations. If not, CalRecycle should use wording that is consistent with the statute.

Section 18980.1.1(c) should explain how the producer obligation applies in the context of white labeling and contract manufacturing. Under Oregon's analogous extended producer responsibility law, the regulations clarify that the person who is directing the manufacturing is the producer. Therefore, if Company A contracts with Manufacturer B (located in California) to produce widgets in covered material using Company A's brand name, Company A would be the producer, not Manufacturer B. The same should be true in California: contract manufacturers should not bear the producer obligation for products sold by the company that owns the brand and directs the manufacturing.

Response to B-15-4

Comment rejected. The language in 18980.1.1(c)(1) is not inconsistent with Public Resources Code section 42041(w)(1); rather, the former explains what it means to be a "licensee of the brand or trademark" for purposes of the latter. The commenter apparently reads Public Resources Code section 42041(w)(1) as requiring a "licensee of the brand" to be a producer, even if the relevant license has nothing to do with manufacturing; that interpretation ignores the context of 42041(w)(1). Regarding section 18980.1.1(c)(3), there is no inconsistency there, either, nor does that provision "expand the scope of what it means to be a licensee." Rather, (c)(3) addresses the scenario where no producer can be identified pursuant to (c)(1) and (2), which would occur, for example, if neither the manufacturer nor the brand owner is in the state. In that scenario, no producer can be identified pursuant to Public Resources Code section 42041(w)(1), and no producer other than a licensee can be identified pursuant to 42041)(w)(2).

Regarding white labeling and contract manufacturing, no change is required because the proposed regulations fully address those scenarios, and the commenter does not explain how they would not do so. The commenter's only proposal is that California law should produce the same result as Oregon's law does for the hypothetical situation the commenter describes. That is not a valid analysis; California law is as stated in Public Resources Code section 42041(w), which may not necessarily produce the same results as Oregon's law.

Comment B-15-5

Sections 18980.6(b) and (c) allow the PRO to dismiss or refuse producer participation. These provisions are an improper delegation of CalRecycle's authority to a private entity. A producer's inability to participate in a PRO, due either to PRO dismissal or refusal, effectively prohibits the producer from lawfully selling products in the state of California, with no reasonable alternatives available to comply with the law and no

recourse through administrative hearing or judicial review. As the agency imbued with authority to implement the Act, CalRecycle alone should adjudicate, through a transparent process, whether a producer is permitted to participate in the program and sell or distribute products in or into California. The PRO should not have the authority to refuse or dismiss producer participation.

Response to B-15-5

CalRecycle rejects this comment. See the response to comment B-13-6.

Comment B-15-6

Section 18980.6.1 provides that the PRO shall prepare and submit a producer responsibility plan on or before either April 1, 2026, or June 15, 2026 (under certain conditions). Upon submission, the plan will then be subject to review and public comment prior to approval; this comment and approval process will likely take several months, in the very least. The contents of this plan will provide producers with critical details about CAA's process and fee schedule, as prescribed in section 18980.6.7. However, California's approved PRO, Circular Action Alliance ("CAA"), is requiring producers to register, report supply data, and pay early fees prior to the existence of even a draft plan—let alone an approved plan. Without the information to be contained in this plan, producers cannot make informed decisions about whether to participate in the PRO, and yet they are being forced to do so by the requirements imposed by CAA. CAA should not be permitted require producers to submit supply data and fees prior to the approval of its producer responsibility plan. All producer compliance dates should be postponed until after CalRecycle has approved the PRO's plan.

Response to B-15-6

CalRecycle rejects this comment. See the response to comment B-13-7.

Comment B-15-7

Section 18980.6.4 does not provide for public comment on amendments to the PRO's producer responsibility plan. This is in contrast to section 18980.6.3, pertaining to plan updates, which does allow for public comment. Section 18980.6.4 should be revised to allow for public comment in order to be consistent with the Act. Section 42051.2(e)(1) of the Act provides that the process for amendments to the producer responsibility plan should be the same as for the updated plan.

Response to B-15-7

CalRecycle rejects this comment. See the response to comment B-13-8.

Comment B-15-8

Section 18980.6.5 requires the PRO to prepare and submit Annual Reports, and notes that the first report should be submitted no later than July 1 of each year after CalRecycle has approved a PRO Plan. However, given the ambiguity around the anticipated timing of CAA's approved PRO Plan, it is unclear when the PRO's plan will

be approved. The timing of the Annual Report therefore should not be tied to the approval of the PRO plan, especially if the PRO is permitted to collect fees from producers in advance of the plan's approval. The PRO should be required to submit Annual Reports to CalRecycle detailing its use of finances beginning in its first year of operation—or, in the very least, in the year it begins collecting fees from producers.

Response to B-15-8

CalRecycle rejects this comment. See the response to comment B-13-9.

Comment B-15-9

Section 18980.6.5 does not allow for public review and comment of the PRO's Annual Report. The opportunity for public comment is crucial and should be added to this section. Moreover, the Annual Report must be unredacted in order to achieve complete transparency regarding the PRO's fee setting and expenditure of funds.

Response to B-15-9

CalRecycle rejects this comment. See the response to comment B-13-10.

Comment B-15-10

Section 18980.6.6(b) should not permit the PRO to redact financial information. Complete, transparent financial data is critical for meaningful oversight by both producers and CalRecycle.

Response to B-15-10

CalRecycle rejects this comment. See the response to comment B-13-11.

Comment B-15-11

Section 18980.6.7(c) permits the PRO to switch from collection of "early fees" to collection of supply-based fees if it determines that it has "sufficient data" to do so. The regulations should clarify more specifically what is meant by "sufficient data" and how the sufficiency of data should be measured.

Response to B-15-11

CalRecycle rejects this comment. See the response to comment B-13-12.

Comment B-15-12

Section 18980.6.8(e) requires access to records within ten (10) calendar days. This is overly burdensome for many businesses, which often rely on a small team to collect and maintain this data. The time permitted for access to records should be extended to thirty (30) calendar days.

Response to B-15-12

CalRecycle rejects this comment. CalRecycle rejects this comment to the extent it recommends changing "10 calendar days" to "30 calendar days" because such change is not necessary to the implementation or enforcement of the Act and would cause undue delay to CalRecycle's ability to carry out its investigative functions and verify compliance with the Act. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code. Section 42051.1(m) already requires all records to be maintained such that they are reasonably accessible to CalRecycle upon request. Consistent with the record maintenance protocol of section 42051.1(m) and section 18980.6.8(d) of the proposed regulations, ten calendar days provides an entity with sufficient time to assemble and provide CalRecycle with the requested records that are already being maintained.

Comment B-15-13

PROs should not be permitted to require binding arbitration as the sole method of dispute resolution with producers. The regulations should address this point specifically. In section 18980.8.(h), for example, the regulations outline an approved dispute resolution process as between the PRO and local jurisdictions and recycling services providers, and further note as follows in Section 18980.8(h)(6): "Nothing in this subdivision shall be construed as empowering the PRO or Independent Producers to require local jurisdictions or recycling service provides to submit any matter to mediation or arbitration." A similar provision is necessary to govern the resolution of disputes between the PRO and producers. CalRecycle should prohibit CAA from requiring producers, through CAA's non-negotiable participant producer agreements, to be subject to binding arbitration with no possibility of judicial review as the sole means of dispute resolution.

Response to B-15-13

CalRecycle rejects this comment for the reasons stated in responses to comments B-13-14 and O-56-4.

Comment B-15-14

Pursuant to sections 18980.1(a)(22)(C) and 18980.10.1(b), producers that are members of a PRO (and therefore are not Independent Producers) may choose not to submit reports to the PRO and instead submit reports directly to CalRecycle. However, the process for this option is not further elaborated beyond two brief references. The regulations should either provide more detail about how this option would be effectuated or direct the PRO to develop a process within its plan. Moreover, producers should be privy to the details of this option before being forced to submit supply data and fees to a PRO.

Response to B-15-14

CalRecycle rejects this comment for the reasons stated in response to comment B-13-15, which is identical to this comment.

Comment B-15-15

Section 18980.13(a) does not indicate that notice will be given to an entity prior to entry for an inspection. Reasonable notice should be included in this provision.
Thank you for the opportunity to submit these comments on the Act's proposed regulations.

Response to B-15-15

CalRecycle rejects this comment. See the response to comment B-13-16.

B-16: TekniPlex (Wouter Geurts)

Comment B-16-1

Feedback Submission to CalRecycle SB54 Draft Regulation Consultation
Submitted by: TekniPlex
Contact: wouter.geurts@tekni-plex.com
Date: October 7, 2025
Subject: Comments and Questions on SB54 Draft Regulations

1. Clarification on Reporting Obligations for Empty Packaging Shipments
TekniPlex manufactures and ships empty single-use packaging (e.g., yogurt containers) into California, which are later filled and marketed by food packers or brand owners. We seek clarification on the following:
Question:
Are we, as the manufacturer and importer of empty primary packaging into California, required to report the secondary and tertiary packaging used for the shipment and transportation of these empty items under SB54? Or is the reporting obligation limited to the brand owner who introduces the filled product to the California market?
We understand that once filled, the brand owner assumes responsibility for the primary and associated packaging. However, our concern lies with the reporting obligations for the packaging used during the initial shipment of empty containers into the state.

Response to B-16-1

Comment rejected. The comment does not set forth proposed revisions to the proposed regulations. Rather, the commenter requests that CalRecycle issue a specific determination as to commenter's obligations under the statute. To the extent the commenter requests that the proposed regulations establish that packaging is not covered material where the packaged goods are "empty primary packaging," CalRecycle rejects that proposal because nothing in statute affords special treatment to such goods. Unless the statute provides otherwise (e.g., Public Resources Code section 42041(e)(2)), the good packaged irrelevant, and its packaging is "covered material" if it is single-use.

Comment B-16-2

2. Timeline and Transparency on Fee Schedules

Question:

Could CalRecycle provide clarity on when the official SB54 fee schedules will be published? Additionally, will any preliminary fee ranges or methodology details be made available to assist producers in forecasting the financial impact of compliance?

This information is critical for budgeting and strategic planning. We have understood there will not be a direct link between 2023 submission now and fees, and much more between 2025 reporting in 2026.

Response to B-16-2

CalRecycle rejects this comment. To the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required. To the extent this comment appears to recommend the revision of section 18980.6.7 of the proposed regulations to offer additional clarification as to the timeline for fee schedules, the proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule, and PRC section 42053(b) establishes the timeline according to which producers will be charged fees. Sections 18980.6.7(a) and (b) of the proposed regulations implement these provisions by further specifying the relevant timelines. Consistent with the statutory intent expressed in PRC section 42053, the PRO is responsible for determining when it will inform producers of the applicable fees that will be charged pursuant to that section. Therefore, no further change to the proposed regulations is necessary.

Comment B-16-3

3. Producer Identification for Embossed or Trademarked Foodservice Ware
TekniPlex manufactures foodservice ware that may bear logos or trademarks of downstream brand owners or may be generic with only our company's identifier.
Questions:
a. If we manufacture plastic foodservice ware customized with logos of brand owners (e.g., food chain restaurants) and ship them to their distributors in California, who is considered the "producer" under SB54 TekniPlex, the distributor, or the brand/franchisee using the customized ware?
b. If we manufacture and sell generic foodservice ware (with no private branding, only our company logo embossed discreetly), and these are sold by distributors to restaurants and hotels in California, are we considered the "producer" under SB54, or does the reporting obligation fall on the distributor? How to avoid dubble reporting? We suggest to add samples in the files

Response to B-16-3

Comment rejected. The comment does not set forth proposed revisions to the proposed regulations. Rather, the commenter requests that CalRecycle issue a specific determination as to commenter's obligations under the statute. The commenter also suggests that CalRecycle "add samples in the files," which CalRecycle interprets as asking that CalRecycle include example applications of the regulations in the rulemaking file. No regulation is necessary, however, for CalRecycle to publish helpful examples outside the formal rulemaking process.

Comment B-16-4

4. Request for Inclusion of Guidance Examples
Recommendation:
We recommend that CalRecycle and the Circular Action Alliance (CAA) include a concrete example in official guidance showing a case where both the packaging manufacturer's logo and the final brand owner's logo appear on the same foodservice ware item.
This would help clarify producer responsibility, avoid double reporting, and support consistent volume reduction calculations.

Response to B-16-4

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not recommend changes to the proposed regulatory text. The commenter requests CalRecycle provide concrete examples as guidance. Not regulation is required for CalRecycle or CAA to as publishing additional resources, such as FAQs or demonstrative examples, regarding the final regulations

Comment B-16-5

5. Reporting Requirements for Expanded Polystyrene (EPS/PS Foam) Products
Question:
Based on CalRecycle's August 2025 notice cite turn1search8, EPS foodservice ware is banned from sale, distribution, or import into California effective January 1, 2025, due to failure to meet the 25% recycling rate threshold.
Given this ban, can CalRecycle confirm whether legacy EPS/PS volumes from 2023 are fully exempt from SB54 reporting requirements? Specifically, since these products can no longer be sold and fees cannot be passed through to customers, should producers exclude these volumes from their compliance reporting?
We attach the relevant CalRecycle communication for reference and request explicit confirmation on this exemption. 6) In other systems e.g. Europe, B2B packaging is typically dealth with by means of other PROs and other reporting systems. We feel misalignment on reportint secondary and tertiary packaging with what is needed for packaging items - e.g. reporting pallets, straps, reporting tape (in meters?), wrap film, .. for which many can be reused.

Response to B-16-5

Comment rejected. The comment does not address the proposed regulations themselves, suggest changes to the proposed regulations, or raise objections related to the rulemaking process. Instead, the comment requests that CalRecycle address specific compliance questions. Accordingly, no response is required. Moreover, even if this comment could be construed to raise an objection or recommend revisions relevant to the issues raised, the commenter's questions rest on a misreading of statutory language that does not require interpretation, so they can be answered by application of the proposed regulations as written. In particular, the commenter is incorrect that Public Resources Code section 42057(i) is an outright ban on EPS; rather, it only restricts producers. If producers choose to violate that restriction by, for example, selling EPS food service ware in the state, article 13 of the proposed regulations thoroughly addresses violations of the Act and would apply. Lastly, nothing in that article or any other provision suggests any other outcome or that the food service ware at issue would not be covered material and thus exempt from obligations related to covered material.[AB69.1]

Regarding "B2B packaging," the commenter does not propose any change to the regulations but may have intended to suggest that the proposed regulations should exempt business-to-business packages from compliance obligations. CalRecycle rejects that suggestion for the reasons provided in response to comment O-38-1. Regarding secondary and tertiary packaging, CalRecycle cannot discern what the change the commenter proposes, especially with respect to packaging components that the commenter alleges can be "reused." To the extent the commenter intended to suggest that secondary and tertiary packaging be exempted or treated differently than primary packaging, CalRecycle also rejects that suggestion for the reasons provided in response to comment O-38-1.

This response does not address the communication that the commenter references as an attachment to the comment because no such attachment was submitted.

B-17: Waste Connections (Christina Pestoni)

Comment B-17-1

We appreciate the time and effort staff has dedicated to evaluating and responding to the Governor’s directive regarding affordability and operational readiness in the proposed regulations. Our feedback remains largely consistent with the positions outlined in our previous correspondence, submitted on May 8, November 4, December 17, 2024, and June 3, 2025.

We are actively collaborating with Circular Action Alliance, contributing to CalRecycle's Needs Assessments, and responding to information requests to support the development of the Producer Responsibility Plan.

In this letter we are reaffirming our concerns over several items currently in SB 54:

1. **There is a need to clarify the definition of Alternative Collection.**
2. **Refillable packaging with putrescible residue is solid waste.**

We are also proposing a discussion for clarifying language to be added to SB 54, the upcoming PRO plan, or both, to ensure there are no franchise violations during the collection of CMC materials, whether by alternative collection or curbside collection.

***

1) There is a need to clarify the definition of Alternative Collection.

We stand in alignment with solid waste industry experts in expressing concern over the current definition of "Alternative Collection":

Article 1 Definitions 18980.1
(2) "Alternative Collection" means a program that collects covered materials, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection, and is not "curbside collection" as defined in subdivision (g) of section 42041 PRC, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction".

The three primary concerns we have are:

a. As it stands, the definition unfairly restricts recycling service providers from offering alternative collection programs if they are under contract with local government. Many recycling providers operate programs outside the scope of their municipal agreements. These recycling programs often share infrastructure and collection mechanisms with other services, but they are distinct and independently operated. Therefore, the current definition of "Alternative Collection" does not accurately reflect the realities of how these services are provided and should be revised to allow for greater flexibility and fairness.

b. We find the addition of the words "discarded" and "solid waste" problematic and recommend that CalRecycle strike the reference to "discarded" and "solid waste" from the definition of "alternative collection."

Inclusion of the words "discarded" and "solid waste" in the regulatory text introduces unnecessary confusion by invoking concepts from solid waste law that CalRecycle has expressly said are not relevant to the definition. Removing this word will align the

regulatory text with the stated purpose of the subsection and provide clearer guidance for implementation.

In the Initial Statement of Reason (ISOR), CalRecycle' s reasoning explains that the purpose of this subsection is to define "alternative collection" in contrast to the broader definition of "curbside collection" under the Act, and to ensure that no program conducted by or on behalf of local jurisdictions can be considered "alternative collection." The reasoning further states that whether a program is considered "alternative collection" cannot depend on whether the material has been discarded or is solid waste, because those concepts are not relevant to whether non-curbside programs successfully recover covered material and whether such recovery constitutes recycling under Public Resources Code section 42041(aa)(1).

Please consider this modified definition:

"Alternative Collection" means a program that collects covered materials, regardless of the manner and location of collection, and is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code, because it is not conducted by a local jurisdiction or by a recycling or composting service provider under contract with a local jurisdiction .Alternative Collection does not mean a Recycling Service Provider is precluded from the opportunity to provide an Alternative Collection Program outside of its local contract.

Response to B-17-1

CalRecycle rejects the commenter's proposed change for multiple reasons. First, the commenter's assertion that the definition of "alternative collection programs" restricts recycling service providers in any way. The definition clarifies a merely semantic issue: In the context of the regulations, "alternative collection programs" refers to all programs not conducted by local jurisdictions or under contract with one. That clarification, on its own, does not imply any restriction on recycling service provider's substantive rights. Second, the definition uses the terms "discarded" and "solid waste" to codify the exact clarification that the commenter claims is appropriate: The reference to those concepts from "solid waste law" only serves to make clear that those concepts are not relevant to whether a program is "alternative collection."

Comment B-17-2

2) Refillable packaging with putrescible residue is solid waste.
There remains a concern putrescible waste will be collected by a nonfranchised hauler in the process of collecting or exchanging refillable/reusable packaging, thereby violating existing franchise agreements and potentially creating public safety concerns.

For clarity we recommend the following language be added to Article 11:

Nothing in this chapter authorizes the collection of reusable or refillable packaging from a residence or business when the packaging contains putrescible residues or other solid

waste materials subject to an exclusive franchise agreement of a local jurisdiction. Any program to recover such items shall be coordinated with, and performed by or under the authorization of, the franchised solid waste service provider for that service area.

In closing, we would like to add a comment regarding the upcoming PRO plan and CMC materials collection. After the PRO plan/CMC list is formally approved and adopted, any companies or jurisdictions collecting CMC materials will no longer be allowed to charge for those collection services. Any program costs for materials collected on the CMC list must in turn be covered by the PRO whether they are collected by alternative collection or curbside collection. To that end, there needs to be a process by which payment/contracting for this collection both takes place and is scrutinized by the jurisdiction and franchise hauler to reach mutual agreement there are no violations of franchise rights. In our discussions with CAA, they agreed to contact the jurisdiction and franchise hauler before engaging in such discussions with third party companies offering these services. For clarity, we would like this process formalized either in SB 54, the PRO plan, or both.

Thank you for considering these ongoing concerns, which could disrupt existing franchise agreements and solid waste systems. We welcome the opportunity to discuss these further and clarify our position.

Response to B-17-2

CalRecycle rejects the commenter's proposed addition to Article 11 because nothing in the statute or the proposed regulations purports to supersede other laws with respect to the rights of the parties under an exclusive franchise agreement or the application of any laws concerning local solid waste collection. Nor does statute affect whether recycling service providers' rights under such agreements necessarily give them the right to control alternative collection programs, which, by definition, are programs not operated by local jurisdictions or under contract with them.

Regarding the purported agreement that the commenter has entered into with "CAA" concerning the process for paying for collection and scrutinizing that collection, that agreement is not law and is not appropriate for incorporating into regulations. Instead, the proposed regulations place appropriate requirements on how the PRO's plan must address payments of costs and disputes over them. See section 18980.8(g) and (h).

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

B-18: AMP Robotics Corporation (Paula Soos)

Comment B-18-1

On behalf of AMP, I appreciate the opportunity to submit these comments addressing the proposed regulatory text under SB 54. AMP strongly supports the intent of SB 54 to shift responsibility for collection, recycling, and residual management of covered materials to producers. We offer the following recommendations focused specifically on ensuring that recovery of recyclable materials from municipal solid waste ("MSW") streams (e.g., at transfer stations, material recovery facilities ("MRFs"), mixed waste processing facilities ("MWPF"), and other "post-collection" locations) are explicitly included in and credited under the program.

AMP pairs high-performance recovery with continuous material characterization and real-time facility data. While diversion from landfills to recycling is our primary objective, the resulting insights give communities, states, and PROs powerful tools for understanding composition, shaping long-term EPR and sustainability strategies, and measuring success.
Below, our comments are organized by relevant regulation sections for CalRecycle's consideration.

Section 18980.1 (Definitions) Clarify "alternative collection" and eligibility of materials recovered from MSW

AMP supports crediting covered materials recovered through the sortation of MSW toward producer recycling obligations. The definition of "alternative collection" "a program that collects covered materials regardless of whether the covered material is discarded or considered solid waste and is not 'curbside collection'" is critical for enabling the recovery of covered materials from MSW prior to the permanent disposal -- and loss of that material in landfills.
To eliminate ambiguity and ensure that quantities recovered from MSW count toward producer obligations recognized by the program, we recommend adding:
"For purposes of producer compliance obligations, quantities of covered materials recovered through alternative collection from MSW streams (e.g., at transfer stations, MRFs, mixed waste processing facilities, or other post-collection sortation locations) shall count fully toward the recycling obligations of producers.

Section 18980.11 (Producer Responsibility Organization Plan Funding Requirements) Ensure "increases" include MSW sortation and allow incentive weighting

The metric of "collection/sorting increases" is key to driving investment and performance in recycling programs. We support CalRecycle's inclusion of a mechanism to reward or credit increases in collection and sorting throughput. However, the rule should explicitly confirm that such credit is available when the increased volumes of new recyclables (e.g., via increased collection) are derived from MSW sortation or recovery efforts at any point in the system (e.g., transfer stations, MRFs, mixed waste processing facilities).

Incentives to improve the recovered volume of recyclables should be designed to encourage new methods of recovery in addition to traditional methods.
We recommend adding:
"For purposes of determining increases in collection and sorting, the Department shall authorize incentive weighting for covered materials recovered through the sorting of MSW, advanced mixed waste processing, or other innovative technologies, consistent with collection and sorting of curbside streams. Such weighting may include temporary bonus multipliers (e.g., 1.2) during the first compliance period to encourage early adoption and scaling of advanced technologies."

Section 18980.3.2 (Methodology for Recycling Rate Determination) Recognize covered materials collected using advanced MSW sortation in determination of collection/sorting baseline

The PRO or Independent Producer must calculate an estimated recycling rate and report it to the department using either prescribed methodologies or an approved alternative. To accurately include the contributions of covered materials collected from the sortation of MSW, the unique nature of materials recovery from large volumes of MSW as opposed to the smaller volumes collected curbside should be taken into account. The value of recovering covered materials from MSW destined for landfills should be captured and quantified in a manner that does not discourage such additionality. Facilities processing MSW (including transfer stations, MRFs, and MWPFs) can produce substantially higher volumes of net new, high quality recyclables at substantially lower cost by accessing far greater volumes of recyclables (nationally, over 75% of all recyclables are found in MSW). However, these facilities also process a greater breadth of materials than some downstream recyclers, which could lead to a lower total recovery rate than would be expected in a MRF processing single-stream materials. Recovery rate guidelines should take this dynamic into account by incentivizing high performance standards and net new covered tons without inadvertently penalizing effective programs such as MWPFs that recover recyclables from waste streams otherwise destined for California's landfills and lost from the circular economy.

We recommend adding:
PROs must accurately account for covered materials recovered from MSW in their estimated recycling rates and reports, modifying the sources of data and methodology as necessary to prevent unintentional bias.

Section 18980.11 (PRO Plan Funding) - Support investment in MSW sortation infrastructure
In the PRO plan funding and compensation requirements, it is essential that PROs allocate funding to support MSW sortation infrastructure (transfer stations, MRFs, MWRF, AI sorting, etc.)
We recommend adding:
"PROs shall allocate funding to eligible recycling service providers, including material recovery facilities, transfer stations, or mixed waste processors that recover covered

materials from MSW. Eligible facilities must comply with program material quality, reporting, and verification requirements. Recovery of covered materials from MSW shall be treated as additive to, not substitutive of, compliance from conventional collection."

Section 18980.11 (PRO Plan Funding) - Incentive Weighting for Advanced MSW Recovery Options

The largest concentration of recyclable material remains in MSW streams that are landfilled. To optimize recovery of these materials, the EPR program should prioritize and incentivize deployment of innovative, high-volume sortation technologies capable of recovering recyclables from MSW.

Advanced technologies that also advance other SB 54 objectives -- such as adaptability to new covered materials, recovery of difficult-to-sort items, and the ability to conduct pre- and post-stream audits -- should be eligible for additional incentive funding.

We recommend adding:

To accelerate recovery of recyclables currently landfilled in MSW, the EPR program should establish an additional incentive payment (e.g., 1.5x multiplier) for innovative technologies that demonstrate recovery of greater than 70 percent of recyclable materials from MSW. Recovering these discarded recyclables will substantially and cost-effectively increase overall recycling rates beyond those achievable through traditional collection systems.

The program should also apply comparable incentive weighting for technologies that support EPR compliance by sorting difficult-to-recover material (e.g., films, foils, drink carriers, flexible packaging), newly covered materials, and technologies capable of conducting pre-and post-collection waste audits.

Section 18980.3 (Evaluations of covered Material and Covered Material Categories) - Apply uniform standards for recovered materials

We support uniform standards such that all recovered covered materials whether originating from curbside, drop-off, or MSW sortation are held to the same quality requirements.

We Recommend Adding:

"Recovered covered materials, whether originating from curbside/primary collection or alternative collection (including MSW sortation), shall be subject to the same material quality, contamination thresholds, verification, and reporting requirements."

This ensures program integrity and consistency.

Section 18980.11.2 (Exemption for Rural Counties and Rural Jurisdictions) Require MSW sortation for covered materials in rural counties and rural jurisdictions granted an exemption from the program

The proposed rules provide rural counties, rural jurisdictions, and recycling service providers an opportunity to apply for an exemption from program requirements. Mixed waste processing facilities ("MWPFs") can produce substantially higher volumes of net new recyclables at substantially lower cost by accessing the 76% of all recyclables in MSW, all without requiring new collection schemes, which are often challenging in small or rural regions.

AMP suggests that in those situations where the local jurisdiction or recycling service provider determines that local conditions render compliance impractical, the use of advanced MSW sortation should be required as a means to recover significant volumes of covered materials until circumstances change.

We recommend adding:

"When a rural county, rural jurisdiction, or rural recycling service provider applies for and is granted an exemption from program compliance, the Department shall require the implementation of advanced MSW sortation to recover covered materials prior to landfill."

Conclusion
We believe these modifications and clarifications will strengthen SB 54 implementation, driving the recovery of larger volumes of covered materials and preventing the permanent loss of those materials through landfill disposal. These recommendations will also keep California at the forefront of new technology, critical as the waste sector is transformed and improved through automation and AI-technologies. Further, acting on these comments will enable California to achieve increases in recycling today by creating a flexible pathway for new, cutting edge technologies to advance and decarbonize the state's solid waste infrastructure.
Thank you for the opportunity to comment. We welcome follow-up questions and discussions with CalRecycle staff around our comments and welcome the opportunity to partner in refining these provisions before final adoption.

Response to B-18-1
CalRecycle rejects the commenter's proposed changes for multiple reasons.

First, regarding the definition of "alternative collection," the proposed additional sentence is unnecessary and would not serve any clarification purpose. The proposed regulation provides a definition of "alternative collection" to clarify a semantic issue: Anything that is not within the definition of "curbside collection" is necessarily "alternative collection," as those terms are used in the proposed regulations. Nothing in the definition purports to affect whether recovery "through alternative collection from MW streams" would "count fully toward the recycling obligations of producers."
Second, regarding "section 18980.11," CalRecycle cannot respond in substance because it cannot discern which provision of the proposed regulation to which the suggestion is directed. Section 18980.11 is not, as the commenter states, titled "Producer Responsibility Organization Plan Funding Requirements," nor is any other section of the proposed regulations.
Third, regarding section 18980.3, no change is appropriate because that section concerns the standards for recyclability, which statute requires to rely solely on the criteria in Public Resources Code section 42355.51(d). Neither those criteria nor this section itself concerns the establishment of standards for recovered materials' "material quality, contamination thresholds, verification, and reporting

requirements." Nor does any other section within Article 3 do concern those issues. More generally, the statute does not authorize CalRecycle to generally regulate the quality of recovered covered materials. Rather, the statute limits "recycling" to materials processed at end markets that qualify as "responsible end markets," and nothing in the proposed regulations suggests that verification and reporting requirements might vary based on how materials were recovered. Lastly, regarding the proposed addition to 18980.11.1, that proposal is rejected because CalRecycle does not have authority under the statute to require any particular recovery means. Rather, local jurisdictions and recycling service providers must include covered material categories when doing so is practicable, which may, depending on the circumstances, encompass the means described by the commenter.

B-19: Sonoco (Scott Byrne)

Comment B-19-1

As a top ten domestic recycler and as one of the country's largest consumers of recovered paper, Sonoco appreciates the challenges faced by today's recycling systems. Sonoco also supports pursuing the best environmental outcomes for packaging while reducing material sent to landfill. We appreciate the ability to comment on the SB 54 Publication of Producer Reporting Guidance Documents and Covered Material Categories Updates and welcome further engagement with CalRecycle staff. In the following sections please find general comments from Sonoco as well as specific information for the broader paper categories, particularly for polycoated paper. By providing this information, Sonoco seeks to help California achieve their goal of increasing the recycling of packaging material.

General Comments

We acknowledge that each state and region have unique processes, infrastructure, and markets that could lead to unique determinations for the recyclability of various materials. We also recognize the benefit to consumers and to companies when working towards harmonization of recyclable materials.

We are pleased to see the update to the covered material categories (CMC) in the CalRecycle reporting guidance covered material categories update from September 2025:

• **25_PF17P*** Paper and Fiber / Multi-Material Laminate / Paperboard with a Plastic Coating/Lining

o New category with material that was previously in 24_PF7P Paper and Fiber / MultiMaterial Laminate / Other Forms w/ plastic component

For clarity, we suggest that CalRecycle update the categories 25_PF10P, 25_PF11P, and

25_PF12P to read: " All forms w/ plastic component, excluding those falling into category

25_PF17P* ". This is in order to clarify that packaging in the format of paperboard with a plastic coating/lining, such as Sonoco's rigid paper container, is considered in the

25_PF17P* category rather than mistakenly being categorized as either the 25_PF10P, 25_PF11P, or 25_PF12P categories.

Poly-coated paper is used across packaging, shipping, and food-service applications. It provides mechanical durability, resistance to water and grease, low mass, and can be engineered as rigid or flexible constructions. The substrate is predominantly paper, a renewable fiber, and the package can be recyclable where collection programs and mills accept it. Moisture and grease barriers are achieved with coatings such as polyethylene or polylactic acid, with other chemistries selected to meet specific performance requirements. Manufacturers continue to introduce barrier innovations that target improved environmental profiles. Because the material is primarily paper with established recovery markets, many poly-coated formats can be processed with other coated papers, including magazines, catalogs, and advertising mailers, where local acceptance exists. Our paper mills have publicly committed to accepting and recycling various forms of polycoated paper, including rigid paper containers and paper cups. As CalRecycle continues to update determinations of recyclability or compostability under PRC section 42061(e) of the SB54 regulations, we request that CalRecycle consider the significant evidence that polycoated paper meets the thresholds required to be considered readily recyclable in California.

Poly Coated Paper Alliance (PCPA) Recyclability Findings

Sonoco is a member of the Poly Coated Paper Alliance (PCPA), a collaborative industry platform working to achieve widespread collection and recycling of poly coated paper products. PCPA membership represents every step in the supply chain from collection and sorting, to pulping, mills, converters, packaging manufacturers, and brands. PCPA conducts ongoing research and collects data to document the existing flow and recovery of poly coated paper products. These include:

- **RFID Testing:** PCPA completed radio-frequency identification (RFID) testing at a materials recovery facility (MRF) equipped with a fiber optical sorter. On average, 74% of the polycoated paper packaging materials were correctly sorted into appropriate marketable bales.
- **Sortation Study:** PCPA completed a sortation test following the Association of Plastic Recyclers (APR) two dimensional/three dimensional (2d3d) sorting potential protocol. 92% of poly coated paper package formats tested were captured in the appropriate marketable bales.
- **Repulpability Test:** Utilizing the FBA/AF&PA part 1 repulpability testing protocol, PCPA tested 20 polycoated paper packages, and all packaging formats achieved fiber yields greater than 61%, with some reaching as high as 84.4%.
- **Bale Audit:** PCPA completed bale audits which included bales from Maine, Massachusetts, California, Ohio, and Oregon. The analysis found no significant difference in the composition of bales from communities or material recovery facilities (MRFs) that explicitly accept polycoated paper packaging materials compared to those that do not. Additionally, the presence of food residue was not inherently higher on polycoated paper packaging, even though it is comprised of many food service and food contact categories.

We encourage CalRecycle staff to engage directly with the PCPA on this topic and for any clarification on the above studies.

Summary

As an operator of 100% recycled paper mills, residential MRFs and a packaging converter, Sonoco is committed to advancing the recycling of all packaging formats and ensuring that the California stewardship program for packaging achieves its stated goals. We believe a well-developed CMC will have a substantial positive impact on the success of California's EPR program for packaging. Polycoated paper should be considered readily recyclable. We look forward to answering any questions you may have regarding Sonoco's experience in the industry and paper cans and other fiber-based packages fit into the future of California's recycling program. Please feel free to reach out to me at scott.byrne@sonoco.com with any questions.

Response to B-19-1

Comment rejected because does not raise an objection or propose changes to the regulatory text. At most, the comment vaguely references objections or proposals that appear later in the submission. To the extent later portions of the commenter's submission require substantive responses, CalRecycle has provided responses to those portions.

B-20: Syensqo (Ian Choiniere)

Comment B-20-1

Syensqo is a global leader in advanced materials and specialty chemicals. Our tailor-made range of products and constantly evolving research offers everyday sustainable market-based solutions for next-generation transportation, resource efficiency, consumer goods, healthcare, and industrial production to accommodate U.S. consumers' needs. Syensqo, through its predecessors, has been connecting people and scientific minds for 160 years. Innovation is at our core and part of our DNA. In the United States, Syensqo employs nearly 4,800 people working in nearly 40 sites across 20 states, including California.

Syensqo is a member of the Coalition for Protein Packaging ("CPP"), which represents producers, distributors, and supply chain partners committed to ensuring safe, sustainable, and affordable protein products for California consumers.

We are writing to express our support for the categorical exclusions provided in Section 18980.2(a)(2) of the draft regulations, which recognize packaging for food subject to regulations, rules, or guidelines for food issued by the FDA and USDA as outside the scope of covered material where no feasible alternative exists.

Support for USDA/FDA Exclusions

- Food Safety and Public Health: FDA and USDA issued regulations, rules and guidelines are not optional, and optimized packaging is critical to preventing microbial contamination, maintaining freshness, and ensuring consumer health. Aligning SB 54 with these standards avoids conflicts between federal and state regulations while ensuring Californians have safe access to protein products.

- Food Security: Protein is an essential nutritional component for California families. The regulatory exclusions help safeguard supply chains and prevent disruptions that could compromise affordability and accessibility of these products.
- Regulatory Certainty: By recognizing federal mandates, CalRecycle provides necessary clarity for producers who must comply with both federal and state law. This reduces compliance risk and allows members to focus on reducing unnecessary packaging elsewhere in their operations.

Conclusion
Syensqo strongly supports CalRecycle's recognition of the unique role of food packaging in maintaining compliance with FDA and USDA regulations, rules, or guidelines in protecting food safety and security. We urge CalRecycle to preserve these categorical exclusions in the final regulations. This approach strikes the right balance between advancing the goals of SB 54 and maintaining California's commitment to public health and nutrition.

Response to B-20-1

Comment rejected. The comment must be rejected, and no response is required, because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

B-21: Ross Neely (Ross Neely)

Comment B-21-1

Kemira appreciates the opportunity to provide comments on the proposed regulations implementing California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Kemira is a global leader in sustainable chemical solutions for water treatment and packaging. In North America, we work closely with municipalities, industrial partners, and packaging producers to deliver technologies that enable safer water, support circular packaging systems, and reduce reliance on non-sustainable solutions. We strongly support California's leadership in advancing circular economy goals and addressing plastic pollution. SB 54 represents a significant step forward in shifting toward systems that emphasize reduction, recyclability, compostability, and sustainability. Our comments below are intended to ensure that the program successfully achieves these objectives while also supporting innovation.

Support for SB 54 Goals

Kemira is aligned with the core objectives of SB 54, including the reduction of single-use packaging, the expansion of recyclable and compostable materials, and the transition toward safer, more sustainable alternatives. Our solutions directly support these goals. For example, Kemira develops barrier and coating chemistries that allow for more recyclable and compostable paper and fiber-based products. Kemira's expertise enables these materials to replace traditional fossil-based plastic by providing the

essential properties and functionalities they need—such as strength, water and oil resistance, and protection to ensure safe and hygienic use in food packaging. Kemira urges CalRecycle to ensure that SB 54 recognizes and incentivizes the use of **truly sustainable, nonfossil derived barrier technologies by clearly distinguishing them from traditional fossil-based plastic** in both definitions and compliance requirements. This is critical to achieving the law's circular economy goals while accelerating innovation.

Response to B-21-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-21-2

Concern: Classification of Innovative Materials

Our broader concern is the treatment of innovative packaging materials—**particularly compostable bioplastics that are inherently biodegradable such as polyhydroxyalkanoates (PHAs) and polyhydroxybutyrate (PHB)**—as well as other next-generation barrier chemistries that are designed to replace traditional fossil-based plastics with more sustainable alternatives. **Including these materials in "problematic" or "non-preferred" categories without a rigorous scientific basis or a full end-of-life assessment would be a missed opportunity.**

PHAs and PHB, as part of the broader category of biodegradable and compostable bioplastics, are inherently compostable and biodegradable, offering a sustainable alternative to traditional fossil-based plastics. In fact, these materials are produced via a fermentation process wherein microorganisms produce and utilize PHAs and PHB as a carbon reserve which is an inherent part of their lifecycle. **Due to this evolutionary feature, PHAs and PHB are broadly biodegradable in nature where microorganisms are present and active such as in home and industrial composting.** Misclassification would discourage adoption of these technologies, undermine investment in sustainable solutions, and send the wrong signal to the market at a time when alternatives to traditional fossil-based, non-degradable plastics are urgently needed. Because California is the largest market in the United States, the way the state classifies emerging materials will shape how other state-level extended producer responsibility (EPR) programs and future federal frameworks develop. This gives California a unique opportunity to lead in fostering innovation and accelerating the adoption of new product technologies that can help end plastic pollution. By taking this approach, next-generation solutions would be encouraged and position the state as a model for sustainable packaging policy, while premature or inaccurate classification would risk cementing incumbent products and hindering the very innovation needed to achieve SB 54's goals.

Kemira urges CalRecycle to ensure that classifications are based on transparent, science-driven criteria, including peer-reviewed lifecycle assessments and realistic end-of-life scenarios. SB 54 should establish clear criteria for compostability and recyclability that reflect real-world conditions and are informed by both scientific and industry expertise. These criteria are essential to ensure that innovative materials are not penalized if they deliver superior environmental performance compared to traditional fossil-based plastics.

California should also actively incentivize the development and adoption of next-generation, non-fossil derived barrier materials that are compostable, recyclable, and have minimal environmental impact. This could include fast-track approval processes, reduced compliance fees, or preferential recognition in reporting requirements for packaging that incorporates such alternatives. **As currently written, SB 54 treats bioplastics such as PHA and PLA the same as traditional fossil-based plastics**, subjecting them to the same requirements and fees as fossil-based plastics despite their compostable nature. Kemira recommends a differentiated approach for biobased, compostable materials that meet rigorous environmental standards, ensuring that such solutions are not discouraged by disproportionate regulatory burdens.

Finally, we encourage CalRecycle to establish a transparent, science-based review process for evaluating new materials. This should allow producers to submit data on environmental safety, compostability, and recyclability, with clear timelines and criteria for regulatory decisions. Such a system would provide predictability, encourage responsible innovation, and help ensure that truly sustainable materials can enter the market without unnecessary delays.

Partnership with California

Kemira is committed to being a constructive partner in California's journey toward a circular economy. We are prepared to share technical expertise on sustainable barriers and packaging chemistries, provide data and lifecycle assessments for innovative materials, and participate in stakeholder workshops and advisory panels to support science-based decision making.

Closing

We commend CalRecycle and the State of California for their leadership on this critical issue and appreciate the opportunity to provide comments. By ensuring that SB 54 is implemented with a strong foundation in science and flexibility for innovation, California can continue to set the national standard for sustainable packaging. Kemira welcomes further dialogue and collaboration with regulators, industry partners, and stakeholders to advance the goals of SB 54.

Response to B-21-2

Comment rejected. The comment offers only the nonspecific recommendation to "ensure that classifications are based on transparent, science-driven criteria . . . that reflect real-world conditions and are informed by both scientific industry and expertise." Even if the commenter proposed any particular criteria on which

CalRecycle would base determinations (instead of only suggesting the processes for how to arrive at those criteria), no change to the proposed regulations would be appropriate in response to this comment because the statute codifies the criteria that CalRecyle must apply. The regulations are legally required to apply the criteria in Public Resources Code section 42355.51(d)(2) through (6) (for recyclability) and 42357 (and surrounding sections, for compostability). Moreover, the commenter erroneously suggests that a problem with the proposed regulations is that certain materials alleged to be "compostable bio[plastics" are categorized as "problematic" or "non-preferred." The proposed regulations contain no provision referring to materials as "problematic," and the reference to "preferred" concerns recyclability in context of the design guide described in Public Resources Code section 42053(d)(2), not compostability.

B-22: Sinclair Systems International LLC (Scott Howarth)

Comment B-22-1

Sinclair is one of the largest manufacturers in the world of produce labels (also known as “price look up” or PLU stickers). These produce labels are a critical part of bringing produce to market for farmers, allowing traceability and branding on individual fruits and vegetables that would otherwise need additional packaging. Sinclair’s North American headquarters are based in Fresno, California where we have 94 employees. Sinclair sells billions of labels annually to California farmers / fruit packers for use on citrus, stonefruit, avocados, kiwifruit, tomatoes, and onions. These little stickers enable California farmers to sell their fresh produce in California, the rest of the US and around the world.

Conventional plastic produce labels cannot be recycled and contaminate compost, as they are small and challenging to screen out. This has led countries like France, New Zealand, and others to require compostable produce labels. Sinclair rose to the challenge and developed a compostable produce sticker. This innovative sticker is a minimal packaging solution able to label at high speeds meeting food safety and all performance requirements to make it through the fresh produce supply chain - from farm to retail to your home. It also meets global standards for safely breaking down into usable compost after it has completed its job at retail point of sale.

We recognize and support Senate Bill 54’s goal to make all covered products and packaging in California reusable, recyclable, or compostable by 2032. The initial rulemaking updated the CMC list that does not properly recognize the requirements established by AB1201; therefore, we believe further changes must ensure intent of SB54 so that compostables like our compostable produce sticker are supported as compliant covered materials alongside recyclables and reusables.

Response to B-22-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not state any recommended changes or raise any objections with particularity; rather, it refers to the proposals and objections raised in greater detail in subsequent portions of the submission. CalRecycle has responded to those proposals and objections in response to those subsequent portions.

Comment B-22-2

CalRecycle has failed to define ‘polymer’ as described in AB 1201. As a result, noncompostable products filled with untested and unknown components might evade requirements for testing and certification, putting the integrity of soil in California at risk. As remedy, we’ve requested the definition of “polymer” in ASTM D883 be included in this regulation to reflect both the intent and the language in existing statute

Response to B-22-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment B-22-3

Responsible End Markets

- Because all compostable materials are tested to the same ASTM standards based on the same conditions, we argue that treating plastic and paper/fiber differently not only betrays the science and how compostables are defined under California law (primarily AB 1201), but it also suggests that it's 'ok' to allow certain products to persist in finished compost piles based on the origin of their materials, not their end of life or certification.
- We recommend highlighting environmental risks associated with immature and unstable compost piles filled with unprocessed products.
- As a substitute requirement to ensure end markets are responsible, we ask CalRecycle to employ the newly published ASTM test methods to ensure facilities are providing optimal conditions for our covered materials.

Response to B-22-3

CalRecycle rejects this comment. To the extent this comment suggests that end markets for materials under section 18980.4(a)(4)(B) of the proposed regulations should be held to the same standard as end markets for materials under section 18980.4(a)(4)(C), see the response to comment B-6-5. To the extent this comment recommends highlighting environmental risks associated with immature and unstable compost piles filled with unprocessed products, no change is necessary. Consistent with PRC section 42041(ad), sections 18980.4(a)(4)(B) and (C) already provide for the biological decomposition of covered materials into recycled organic product meeting standards necessary to

be sold into the marketplace. Moreover, under section 18980.4(a)(4)(B) of the proposed regulations, any covered material inadvertently included in the process that remains undecomposed is considered an incompatible material and must be handled in a manner consistent with section 18980.4(a)(3). Therefore, the proposed regulations already provide for the sufficient decomposition and processing of covered materials into recycled organic product in a manner that is consistent with the Act and protective of the environment. See also the responses to comments O-75-12 and O-83-5. Additionally, to the extent this comment recommends application of ASTM test methods, see the response to comment O-83-5. No change is necessary.

Comment B-22-4

Sinclair is a proud California company that believes in the principles of SB54 and with these proposed changes it offers a level play field for all certified compostable packaging products and removes confusion by referring to recognized ASTM standards

Response to B-22-4

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-23: Alliance for Automotive Innovation (Emily Jones)

Comment B-23-1

CalRecycle has issued a Notice of Action for implementation of SB 54 “Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.” The Alliance for Automotive Innovation (Auto Innovators) appreciates the opportunity to provide comments on this next step in California’s implementation of its extended producer responsibility (EPR) program. Our members will be significantly impacted by these regulations, and our comments reflect our commitment to a continued constructive dialogue with CalRecycle staff.

Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell around 95% of the new light-duty vehicles in the United States. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country. Millions of packaged auto parts are transported across the country and across the globe in order to repair and maintain the vehicles that our members sell; therefore, EPR programs have a substantial impact on automakers.

We appreciate that CalRecycle has refined this second iteration of proposed regulations to reduce some of requirements and resultant burdens and costs outlined in the May 2024 SB 54 proposed regulations.3 However, we are concerned that in some cases the

current proposal creates a program that actually extends the reach of the program beyond plastics reaching consumers – the stated intent of the Act.4 Our comments here reflect the basis for our concerns and recommendations to further reduce burden both for CalRecycle and impacted industry sectors.

Response to B-23-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a specific change to the proposed regulations, does not raise an objection concerning the rulemaking process, and to the extent the comment is mainly introductory and references other portions of the submission which have suggested changes, CalRecycle has responded to those portions separately.

Comment B-23-2

Key Definitions Needing Clarity

We have specific concerns regarding CalRecycle's proposed definitions for "consumer" and "distribution" and the implications that they have for business-to-business distribution.

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

"Distribution" and "distribute," as used in the Act and this chapter, mean the act of transferring products to another person within the supply chain or to the end user of the products, and "import" means the act of bringing products from outside the state into the state for purposes of sale or distribution…5

We request that both of these definitions specifically exclude or exempt business-to-business operations. Including business-to-business operations such as pallet wrap, protective films, and replacement parts as covered activities substantially increases administrative burden and distracts from efforts to reduce single-use packaging. Many companies are already working towards this in business-to-business operations, including by introducing reusable materials and replacing plastic wrap with more sustainable alternatives where possible. For example, Minnesota has recognized this and has defined covered products so that it excludes materials that a producer distributes to another producer and are not further distributed to a person other than the commercial or business entity that first received the product.6

Additionally, defining "consumer" in a way that clarifies that a consumer is a person who purchases goods for personal use would add needed clarity and meet the intent of the Act.

Response to B-23-2

CalRecycle rejects this comment for the reasons provided in response to comments O-38-1. Also, the justification for the proposed change--that business-to-business operations are already reducing "single-use packaging" and introducing "reusable materials"--is nonsensical. One express function of the statute is to establish what constitutes "reusable" packaging, as opposed to "single-use" packaging, to begin with. See, also, CalRecycle's response to comment O-40-1.

Comment B-23-3

Exemption for Business-to-Business Distribution

In keeping with the intent of the Act and to ensure a workable program, we request that CalRecycle expressly exempt business-to-business operations. In addition to other exemptions in the proposed regulations, such as the hazardous materials exemption,7 we believe that an exemption such as that cited above for Minnesota would be in keeping with the need to identify plastics reaching consumers. We see no constraints regarding the legislation that would prohibit this type of exemption.

Response to B-23-3

CalRecycle rejects this comment. The purpose of section 18980.2.2 is to address the exclusions created by sections 42041(e)(2)(F) and 42041(s)(4)(A) of the PRC, which do not contain the exclusion that the commenter seeks for business-to-business materials. Unlike the packaging used to contain hazardous products pursuant to section 42041(e)(2)(C) and (D) which was cited by the commenter, there is no business-to-business categorical exclusion under the Act. With regard to the Act's application to business-to-business products, please see the response to comment O-38-1. Taking into account the foregoing, there is no need to change the proposed regulations.

Comment B-23-4

Concerns with Proposed Fee Calculations

SB54 stipulates that a fee will be imposed on participants but does not specify how that fee should be collected, giving CalRecycle leeway in how fees should be calculated.

The plan shall include a fee for participants of the [producer responsibility organization] PRO consistent with the provisions of Section 42053, set forth the calculation of the fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO’s approved plan.8

In the draft regulations CalRecycle proposes that the fee be calculated using the following guidelines in the statute:

A PRO shall structure the fee schedule required pursuant to subdivision (a), delineated by covered material category and based on the following factors: (1) The costs to

ensure each covered material category meets the requirements of this chapter. Covered material that is easier and less expensive to recycle or compost or that is designed to be recycled into a similar covered material or a material that is easier to be composted shall be subject to lower fees. The costs may include all of the following: (A) Costs to develop and sustain viable responsible end markets for each covered material category. (B) Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material either through curbside collection or other means.9

Our further understanding is that fees will be calculated based on the number of plastic components and the weight of plastic covered materials. We would recommend that CalRecycle include additional factors that would make this process more equitable and workable. For example, we recommend CalRecycle consider allowing more simplified/averaged reporting (e.g., an industry calculator),10 exempting specific components (especially smaller items such as replacement parts), and items that are more difficult to report such as plastic inks and adhesives.

Response to B-23-4

CalRecycle rejects this comment. The current regulations regarding fee calculation are consistent with statute, including section 42053(c) of the PRC, and the commenter's general suggestions do not identify any specific text that is needed to further comply with statute. Further, the general suggestion to create additional exemptions not only lacks the specificity to require a response, but it also conflicts with statute and exceeds CalRecycle's rulemaking authority.

Comment B-23-5

Compliance Deadlines

We are concerned that the proposed regulations do not extend the compliance deadlines even though key components of the program have yet to be developed. Significant guidance needs to be developed to clarify the requirements that “covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable or compostable,” “that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates,” and that “not less than 65% of plastic covered material to be recycled on and after January 1, 2032.”11 This timing issue holds true for the exemption process outlined in the proposed regulations. It is not clear what form that process will take nor how long it will take. Until such guidance and the specifications that CalRecycle will require are developed, it will be challenging for producers to request an exemption or for covered items to move to acceptable alternatives.

Response to B-23-5

CalRecycle rejects this comment, which offers the vague suggestion that the proposed regulations should "extend the compliance deadlines." The commenter suggests no particular extension, and, in any event, no provision in statute allows

CalRecycle to change the cited compliance dates (January 1, 2032, for Public Resources Code section 42050(b) and (c)). With regard to the timing of exemptions, no change is necessary because the regulations clearly state the standards by which CalRecycle will evaluate exemption requests, and those exemptions will be valid for at least two years, providing ample lead time for producers to request exemptions before their compliance obligations take effect.

Comment B-23-6

Conclusion

Again, we appreciate this opportunity to provide constructive comment and recommendations for making this program more workable and less burdensome for both CalRecycle and impacted industry sectors. We strongly recommend that CalRecyle include a business-to-business exemption that would be a practical approach to implementation. We see this as going hand in hand with tightening up the definitions identified above. We also have concerns with the fee calculation approach and would recommend that CalRecycle convene a group of impacted industries to provide real world approaches that would be more effective. And finally, given the delays in the development of this proposal, we urge reconsideration of the compliance dates.

Response to B-23-6

Comment rejected. Regarding the request for a "business-to-business exemption," CalRecycle rejects that proposal for the reasons stated in response to comment O-38-1 and because the statute does not grant CalRecycle general authority to create new exemptions. Regarding the "fee calculation approach," the commenter does not offer any revision for CalRecycle to consider. Instead, the commenter only recommends that CalRecycle further confer with "impacted industries"; that is not a proposed change to the regulatory text for CalRecycle to consider, so no specific response to that recommendation is necessary. Regarding "reconsideration of the compliance dates," the commenter again fails to specify what changes to the proposed regulations they would consider appropriate. In any event, the statute does not grant CalRecycle general authority to change the compliance dates set in statute, so no change is appropriate.

B-24: g2 revolution, LLC (Michael Sangobanwo, PE)

Comment B-24-1

On behalf of g2 revolution, LLC (“g2”), we appreciate the opportunity to comment on CalRecycle’s proposed regulations (“Proposed Regulations”) implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act, Pub. Res. Code § 42040 et seq. (“SB 54” or “the Act”). g2 is a specialty recycling solutions company dedicated to developing innovative, environmentally responsible strategies for our customers. For over fifteen years, we have supported customers nationwide with material management, reverse-logistics, take-back, and specialty recycling program,

resulting in the successful diversion of roughly twenty-five million pounds of difficult to-recycle consumer and commercial materials, such as multilayer film, flexible packaging, retail hard goods, and regulated product returns, from landfills to higher-value recovery pathways each year. We share California's commitment to advancing a circular economy by reducing plastic pollution and improving end-of-life outcomes for packaging, paper, and food-service ware.

While we are aligned with the State's policy goals, we have serious reservations about CalRecycle's Proposed Regulations as currently drafted. The framework for Extended Producer Responsibility ("EPR") outlined in the Proposed Regulations is unnecessarily complex and imposes disproportionate compliance burdens that risk stifling, rather than encouraging, the innovative recovery solutions that SB 54 was designed to foster. Especially worrisome, the Proposed Regulations also delegate broad programmatic authority to non-regulatory thirdparties, yet lack meaningful safeguards for public oversight, transparency, or due-process, thereby risking both inequitable cost allocation and diminished accountability. In addition, several key definitions, requirements, and procedural mechanisms appear to conflict with established federal and state environmental law principles, and could inadvertently disrupt existing, highly effective take-back and recycling infrastructures that already deliver substantial diversion, data transparency, and environmental benefits.

Accordingly, we respectfully submit the following comments to assist CalRecycle in refining the Proposed Regulations so that the final rule set will support rather than undermine proven recycling solutions. We believe the changes discussed below will also help maximize the Act's potential to achieve California's ambitious circular economy objectives.

Response to B-24-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

Comment B-24-2

I. Overview of g2: Transforming Recycling and Sustainability for Businesses.
g2 is a mission-driven company committed to "Changing the Way the World Recycles®."1 Since our founding in 2008, we have specialized in providing innovative, compliant recycling and sustainability solutions for businesses across a diverse range of industries—including office food and coffee service, retail, healthcare, beauty, and electronics. Our reputation is built on tackling the unique challenges of managing and disposing of hard-to-recycle materials. While some material recovery facilities may manage greater overall volumes, g2's expertise is focused on the most difficult-to-recycle items—materials that would otherwise be destined for landfill without our intervention.

Our core services encompass the safe collection, management, and recycling of consumer chemical products and their packaging; comprehensive management of

product recalls and returns; creative Second Life® repurposing solutions; and robust material data collection and reporting. We proudly partner with more than two dozen national retail chains and numerous commercial and industrial businesses, ensuring the safe and responsible end-of-life management of products such as hair and body care items, household cleaners, and detergents—addressing both packaging and any residual chemicals.

Our capabilities extend to managing damaged, expired, and returned products, where we evaluate the most environmentally and socially responsible disposition options, including donation, industrial reuse, and, when appropriate, waste-to-energy conversion. Every engagement begins with a thorough assessment of each customer's operations and material streams, allowing us to design a customized collection and logistics program. Materials are transported from the customer's site to one of g2's advanced processing facilities, where they are sorted and managed using the best available methods.

At g2, we are dedicated to finding beneficial, cost-effective solutions that minimize landfill use to the greatest extent possible. Whenever feasible, we reuse or repurpose materials collected from our customers' businesses. For example, after separating consumer products like soaps, detergents, and cleaners from their packaging, we transform the remaining products into g2branded remixed items such as industrial floor washes and commercial deodorizers. Packaging materials, including cardstock and clamshell plastics, are recovered for recycling. We also consolidate returned consumer products and collaborate with downstream processors to reclaim valuable chemicals and materials. As an illustration, nail polish returned to retail stores can be aggregated, processed, and incorporated into formulated alkyd paints for commercial use.

Transparency and accountability are fundamental to our operations. We regularly undergo independent third-party audits of our materials management and recycling processes to ensure the highest standards. Our facilities have achieved GreenCircle Certified Zero Waste to Landfill status, demonstrating our success in diverting 100% of audited waste streams away from landfills. Beyond compliance, we are recognized leaders in sustainable innovation, continually exploring and implementing new methods to reuse or recycle materials that cannot be donated or processed through traditional systems. This ongoing commitment ensures we deliver the most responsible and forward-thinking solutions for our customers and the environment. Our work also directly supports California's environmental priorities, including the State's EPR policies aimed at reducing waste, improving recycling rates, and ensuring the responsible management of products at end-of-life.

Response to B-24-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-24-3

II. CalRecycle's Proposed Regulations Unlawfully Delegate Essential Regulatory Authority to a Private Entity.

A foundational element of California's EPR program under SB 54 is the option for producers to satisfy their EPR compliance obligations by forming a Producer Responsibility Organization ("PRO").2 SB 54 envisions a PRO as being a nonprofit entity that is established by producers to function as their collective representative and liaison with CalRecycle for all matters related to EPR compliance. In this capacity, the PRO is responsible for developing, coordinating, and implementing an approved stewardship plan that details how its member producers will meet the State's EPR requirements.3 PROs therefore play a central role in the administration of EPR, streamlining compliance for individual producers by managing key functions such as registration, reporting, fee assessment and payment, and the effective execution of recycling and source reduction programs. Beyond these core responsibilities, PROs are also charged with advancing community outreach, supporting the development of sustainable solutions, and investing in technologies that improve collection and management systems to foster a circular economy. But, importantly, the statutory role of a PRO is that of a coordinator and facilitator—not a regulator, enforcer, decision-maker, or auditor. The PRO's mandate is to organize and support producer compliance, ensuring that the collective efforts of its members align with SB 54's objectives and regulatory requirements, while leaving enforcement and oversight functions to CalRecycle and other designated authorities.4

CalRecycle's Proposed Regulations substantially broaden the authority of PROs beyond the original intent of SB 54, effectively positioning them as the architects and overseers of California's recycling system. Under the Proposed Regulations, PROs are empowered to monitor and refer noncompliant producers to CalRecycle for enforcement action,5 and direct the development and implementation of recycling solutions and source reduction solutions in the state.6 PROs are also granted independent authority to determine how materials are categorized, processed, and recycled within the system.7 The Proposed Regulations further allow PROs to determine which materials qualify for exemptions, control the flow of materials through the recycling system, and influence the adoption of new recycling technologies and infrastructure.8 Moreover, PROs are tasked with establishing standards for "responsible end markets" and are required to conduct annual, independent third-party audits of these end markets and recycling service providers that handle EPR-covered materials.9 PROs can then use these standards to determine where and when to provide financial support to recycling service providers and other entities to drive system improvements.10

This regulatory framework fundamentally shifts primary responsibility for assessing both producer and recycling service provider compliance with EPR requirements from CalRecycle to PROs. By doing so, CalRecycle's Proposed Regulations delegate critical regulatory functions, including the interpretation of statutory and regulatory provisions, the determination of exemptions, and the approval of responsible end markets, to private organizations that lack the direct public oversight, transparency, and

accountability inherent to governmental agencies.11 This transfer of authority constitutes an improper delegation of core administrative and oversight responsibilities that, under SB 54, are intended to remain with CalRecycle. Many of the contemplated requirements are also unnecessary and duplicative because recycling service providers are already subject to a comprehensive set of federal and state laws governing material management, handling, transportation, and disposal. The Proposed Regulations, therefore, layer on additional—and arguably redundant—oversight and compliance obligations for these entities, without clear statutory authorization or demonstrated necessity under SB 54. This approach risks creating regulatory confusion and inefficiency, while undermining the clear lines of accountability that are essential for effective program administration.

The expanded authority granted to PROs to approve and oversee service providers designated as “responsible end markets,” gives PROs broad access to sensitive information and substantial authority over these providers. This delegation of authority and oversight raises a separate and particularly significant concern over the Proposed Regulations’ absence of meaningful accountability mechanisms for PRO administration. There is no clearly defined process for service providers to challenge or appeal a PRO’s determinations, nor are there sufficient safeguards to protect confidential business information or trade secrets, such as proprietary recycling technologies. Additionally, the Proposed Regulations do not explicitly assign CalRecycle any role in monitoring or ensuring that PRO interactions with recycling service providers are conducted transparently and fairly. The absence of procedural safeguards and oversight provisions raises substantial concerns about due process, transparency, and the appropriate allocation of regulatory authority within California’s EPR framework. Without clear avenues for recourse or independent review, service providers may be exposed to arbitrary or inconsistent decisionmaking by PROs, ultimately undermining the integrity and effectiveness of the program.

To ensure consistency with the intent of SB 54 and maintain regulatory integrity, we respectfully urge CalRecycle to reassess the scope of authority granted to PROs. CalRecycle should retain ultimate decision-making authority over all regulatory matters, including material exemptions and responsible end market designations. Additionally, the regulatory framework should establish a clear, formal grievance and appeals process that allows recyclers, service providers, and other affected stakeholders to challenge PRO decisions or raise concerns about PRO conduct directly with CalRecycle.

Response to B-24-3

Comment rejected. This comment advocates for two changes to the proposed regulations. First, it proposes that CalRecycle establish a "challenge or appeal" process, which the commenter links to issues of confidentiality. CalRecycle declines to adopt a "challenge or appeal" process for the reasons provided in response to comment O-38-1. Moreover, neither statute nor the proposed regulations conceive of a PRO having "authority over" any end markets. Rather, the PRO has the burden of establishing that there are responsible end markets

available to process covered material; only processing at such end markets may be considered "recycling." No end market incurs any legal obligation under the statute or regulations. Regarding confidentiality, Public Resources Code sections 42060(a)(2)(E) and 42080(e) protects confidentiality of information obtained by CalRecycle, and responsible end markets and the PRO may establish their own non-disclosure agreements.
This comment also broadly asserts that CalRecycle "should retain ultimate decision-making authority over all regulatory matters, including material exemptions and responsible end market designation." However, nothing in the proposed regulations suggest CalRecycle will relinquish its authority over any regulatory matter. The statute (Pub. Resources Code sections 42080 and 42081) unambiguously authorizes CalRecycle to impose penalties when any person violates their statutory obligations, and Article 13 of the proposed regulations detail how CalRecycle will carry out its enforcement role.

Comment B-24-4

III. CalRecycle's Proposed Regulations Set Burdensome Expectations for Exempt Materials

SB 54 was enacted to address the environmental and public health impacts of postconsumer single-use plastic packaging and food service ware.12 The statute expressly defines "covered material" to include "single-use packaging that is routinely recycled, disposed of, or discarded after use, and is not typically refilled or reused by the producer." This definition was carefully crafted to exclude certain types of packaging from SB 54's requirements and to provide clear pathways for materials to be exempted.13 Both the statutory language and legislative history make clear that SB 54's EPR obligations were intended to focus on single-use packaging and food service ware primarily encountered in the consumer context—where end-of-life management is deficient due to infrastructure gaps or consumer behavior. In contrast, materials excluded or exempted from coverage were not meant to be subject to the same rigorous management or EPR fees, as other effective stewardship or waste management controls are already in place for these materials.

Despite this intent, CalRecycle's Proposed Regulations establish an unnecessarily restrictive and burdensome process for verifying categorically excluded materials and seeking exemptions from EPR requirements. The regulations impose a multi-step notice, review, and determination process for managing such materials, regardless of whether exclusion is dictated by statute, regulation, safety concerns, compliance challenges, conflicts with federal law, or the existence of well established, high-performing end markets. For example, packaging or components used for federally regulated products—excluded from the definition of "covered material" under SB 54—are subject to an exemption notice, CalRecycle review, and a determination of eligibility before they can be managed as excluded or exempt for EPR purposes.14 The Proposed Regulations similarly require notification and review for reusable and refillable packaging, medical and drug device packaging, durable packaging, and de minimis components, with determinations published and re-evaluated at prescribed

intervals.15 Critically, only a PRO or approved Independent Producer may submit exemption applications, and each request must include extensive justifications, comprehensive supporting data, and, where applicable, a detailed compliance plan for phasing the material into the program over time.16 Exemptions are not permanent and are subject to ongoing review and renewal, imposing a continuing compliance burden on materials that may already be effectively managed through other environmental programs or stewardship models.17

This approach is fundamentally inconsistent with SB 54. The statute was designed to exempt or exclude certain materials to avoid burdening producers with unnecessary obligations, duplicative management efforts, or excessive fees. By imposing a regulatory process on excluded and exempt materials, the Proposed Regulations effectively extend EPR obligations beyond the intent and purpose of SB 54. In doing so, the Proposed Regulations fail to consider the unintended consequences of attempting to manage all materials under EPR, irrespective of their type, existing regulation under other frameworks, or successful management under existing take-back or stewardship programs. These potential consequences include (i) producers discontinuing participation in effective stewardship programs due to increased EPR-related costs, and (ii) incentives to reroute materials into other environmental programs (e.g., hazardous substance and waste regimes) to avoid EPR assessments. The Proposed Regulations also fail to address how exemptions should be applied for materials currently managed through successfully established mechanisms such as take-back programs, reverse logistics, or product return and recall systems, creating a significant gap in regulatory clarity for common and effective industry practices.

The process established in the Proposed Regulations for managing excluded and exempt materials goes well beyond what SB 54 envisioned. SB 54 expressly distinguishes between materials excluded from the definition of “covered material” and those eligible for exemption and does not contemplate the imposition of additional regulatory hurdles for these categories. By requiring extensive documentation, review, and ongoing compliance for excluded and exempt materials, the Proposed Regulations create an unreasonable regulatory burden that will increase the administrative complexity of EPR compliance programs and drive-up costs for California businesses and consumers. In particular, the Proposed Regulations place significant and undue burdens on non-producer entities—such as recyclers and service providers—by obligating them to conduct detailed analyses, prepare comprehensive data reports, and disclose proprietary business information to third parties, often without adequate safeguards or confidentiality protections. These requirements are not only excessive, but also unnecessary, as the status of excluded or exempt materials could be demonstrated through producer records subject to audit or review by CalRecycle. This alternative approach would reduce regulatory and administrative burdens while still ensuring compliance and oversight.

To address these issues, CalRecycle should revise all relevant regulatory definitions in the Proposed Regulations to align more closely with the intent of SB 54 and to enhance regulatory clarity. Specifically, the regulations should:

 Avoid imposing unnecessary requirements on the management of excluded or exempt materials;
 Clearly address the treatment of materials already managed through alternative, industryled collection, and recovery systems;
 Ensure that exempt or excluded materials are not subject to ongoing, duplicative compliance obligations; and
 Refrain from requiring unreasonable data reporting or disclosure from service providers, particularly when such requirements could compromise proprietary or confidential business information.

Absent these revisions, the Proposed Regulations risk overcomplicating the EPR framework, increasing administrative burdens, and deterring participation by recycling and logistics providers—outcomes that would undermine the core objectives of SB 54.

Response to B-24-4

Comment rejected. The commenter requests sweeping changes for all exemption and exclusion provisions in the proposed regulations. The commenter, however, raises objections to all requirements, identifying none that it considers "unnecessary." CalRecycle has only imposed reasonably necessary requirements, as explained further in the Initial Statement of Reasons and Final Statement of Reasons for all provisions relating to exclusions and exemptions. The commenter is also incorrect that the proposed regulations do not address materials already managed through alternative, industryled [sic] collection, and recovery systems." The Legislature adopted various exclusions specifically aimed to accommodate those circumstances (e.g., Public Resources Code sections 42041(e)(2)(A) through (H), 42041(s)(4), and 42060(a)(3) and (4)) and, for multiple of them, expressly provided a role for CalRecycle in administering them. CalRecycle has imposed burdens on producers seeking to avail themselves of those accommodations where mandated and where reasonably necessary to achieve the purpose of the statute. It is not, as the commenter asserts, "fundamentally inconsistent" with the statute for producers to have "compliance obligations" to avail themselves of benefits afforded them under statute; to argue otherwise is to say that producers should not have to show that they comply with the law, so that CalRecycle would have to blindly trust those claiming to do so. Regarding the concern over confidential business information, there is no indication in statute that the Public Records Act's protections do not fully protect confidential business information, and the commenter does not support its suggestion to the contrary. See, also, CalRecycle's response to comment I-63-7. In any event, the commenter's suggestion that CalRecycle "[r]efrain from unreasonable data reporting or disclosure" cannot be implemented because, as also noted above with respect to "unnecessary requirements," the commenter does not suggest what it would consider "reasonable" data reporting and disclosures; instead, the commenter offers the unreasonable request that CalRecycle instead rely on its authority to "audit or review" records. That suggestion offloads all responsibility for demonstrating compliance with the law

from producers onto CalRecycle. There is no suggestion in statute that the Legislature intended to limit producers' responsibilities in such a drastic way.

To the extent the commenter's third suggestion concerns the exclusion of food and agricultural packaging from the definition of "covered material" described in section 18980.2(a)(2), CalRecycle also rejects that suggestion because there are no compliance obligations placed on packaging excluded from that definition.

Comment B-24-5

IV. CalRecycle's Proposed Regulations Are Likely to Deter Participation by Out-of-State Recyclers and Service Providers.

CalRecycle's Proposed Regulations establish new, highly stringent, and often duplicative environmental, health, and transparency standards for entities designated as "responsible end markets."18 Under the proposed framework, the PRO is charged with identifying, supporting, and reporting on these end markets, and service providers or recyclers must demonstrate compliance with these standards to the PRO in order to receive and process covered materials under California's EPR program.19 While CalRecycle's intent with these requirements may be to promote accountability and sustainability in the end-use of recycled materials, the practical and economic implications are significant—particularly for innovative recyclers and out-of-state partners.

Many existing service providers, recyclers, and facilities that would qualify as end markets, including those located outside California, are already subject to a comprehensive array of environmental, health, and safety regulations. These include federal statutes such as the Resource Conservation and Recovery Act ("RCRA"), as well as state and municipal laws governing solid waste management. In addition, many of these providers already participate in rigorous third party auditing and verification programs. Imposing additional California-specific requirements, particularly those that duplicate or exceed the standards of other jurisdictions, may present significant compliance challenges for these entities. Service providers, recyclers, and processing facilities are unlikely to have a compelling incentive to modify their operations solely to satisfy a PRO's expectations or to meet narrowly tailored regulatory definitions that apply only in California, especially when such changes introduce new administrative burdens without delivering a corresponding market benefit.

For example, an innovative end market in Wisconsin that uses novel technology to break down plastics for use in construction aggregate—delivering measurable circular economy and environmental benefits—would have little reason to implement additional California-specific reporting or operational requirements that do not substantively improve recycling processes or material outcomes. Under CalRecycle's Proposed Regulations, such end markets could be excluded from participation—not because of any deficiency in environmental performance, but due to the rigidity and duplicative nature of the regulatory framework. This approach risks discouraging participation by high-performing end markets and undermining the broader goals of advancing a circular economy and maximizing environmental benefits.

CalRecycle's Proposed Regulations also appear to grant the PRO broad discretion in determining which end markets to support or prioritize for investment. Having PRO oversight of end markets raises concerns that PROs could, even inadvertently, influence the success of recycling technologies or markets based on factors wholly unrelated to environmental performance or innovation. These same determinations may also affect the ability of producers or recyclers to secure material exemptions, potentially discouraging investment in novel recycling pathways that could meaningfully advance circularity.

To address these concerns, we respectfully recommend the following:
 Incorporate Flexibility for Out-of-State End Markets: CalRecycle should recognize reputable end markets outside California that meet equivalent environmental standards under their own jurisdictions, without requiring full compliance with California-specific rules. CalRecycle should also avoid imposing unnecessary or duplicative oversight of end markets through its EPR program. It should not, for example, be CalRecycle or the PRO's responsibility under SB 54 to verify an out-of-state end market's compliance with their state's laws or permits.
 Clarify and Limit the PRO's Gatekeeping Role: The PRO's authority in designating responsible end markets should be clearly defined and subject to CalRecycle oversight, ensuring that innovative or alternative recycling solutions are not excluded due to procedural or administrative barriers. The PRO further should not be responsible for independently setting environmental, health, or safety standards that end-markets are required to comply with.
 Ensure Independence in Responsible End Market Decisions: Decisions regarding an entity's designation as a responsible end market should rest with CalRecycle and not be contingent on whether a PRO has endorsed a particular end market or technology.

Absent these adjustments, the "responsible end markets" framework risks becoming a barrier to innovation and interstate collaboration, undermining the effectiveness of California's EPR program and discouraging the development and adoption of viable circular economy solutions.

Response to B-24-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(ad), 42051.1, and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. First, to the extent this comment recommends incorporating flexibility for out-of-state end markets, such flexibility is already incorporated. The proposed regulations, particularly section 18980.4(a)(1), already require applicable entities to operate in compliance with all permitting, licensing, and other clearances under all applicable local, sub-national, national, and international laws. Therefore, rather than impose California standards on out-of-state entities, section 18980.4(a)(1) merely requires those entities to comply with relevant laws applicable in their own jurisdictions. To the extent this comment suggests it should not be CalRecycle's or the PRO's responsibility to

verify an out-of-state end market's compliance with their state's laws or permits, the proposed regulations are consistent with PRC section 42041(ad). That provision authorizes CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety; to the extent one such criterion is the entity's compliance with all applicable laws, it is well within CalRecycle's authority under the Act to verify satisfaction of that criterion. Second, to the extent this comment recommends clarifying and limiting the PRO's gatekeeping role with respect to responsible end markets, no further clarification is necessary. The proposed regulations already provide CalRecycle with sufficient oversight in the designation of responsible end markets. For example, section 18980.4.1(a) of the proposed regulations requires a PRO to include in its plan the method by which it will identify responsible end markets, and those plans are subject to CalRecycle's review and approval. Moreover, section 18980.4.1(c) of the proposed regulations requires a PRO to maintain all necessary records to verify responsible end markets and produce such records to CalRecycle upon request, and section 18980.4.2 requires annual compliance audits of responsible end markets and subjects such audits to CalRecycle review (see, e.g., sections 18980.4.2(b) through (d)). Therefore, CalRecycle already has a significant role in overseeing the designation of responsible end markets under the proposed regulations and the PRO's gatekeeping role is sufficiently limited. Finally, to the extent this comment recommends ensuring CalRecycle's independence in making a decision regarding an entity's designation as a responsible end market, no change is necessary. Section 18980.4.2(e) of the proposed regulations clearly provides that CalRecycle has an independent role in determining whether an end market continues to meet the requirements to be considered a responsible end market. Moreover, a PRO's demonstrations of new technologies are subject to review and approval by CalRecycle, including under sections 18980.4.1(d)(5) and (6) of the proposed regulations. To the extent CalRecycle requires additional information to make an independent determination outside of the information already provided by a PRO, sections 18980.4.1(c) and 18980.4.2(d) provide CalRecycle with authority to request the necessary information. Therefore, the proposed regulations already allow for the authorities and outcomes recommended by this comment and no change is necessary.

Comment B-24-6

V. CalRecycle’s Proposed Regulations Should Have Definitions and Requirements That Foster Use of the Most Sustainable Materials Management Practices.

As a final matter, we appreciate CalRecycle’s efforts to clarify the distinction between “disposal” and “recycling” in the Proposed Regulations and to ensure that only legitimate recycling activities are credited toward compliance with SB 54. However, we are concerned that an approach centered solely on a binary distinction between “recycling” and “disposal,” without recognizing beneficial use pathways or the most

sustainable management option for a given material, may produce unintended consequences.20

CalRecycle's proposed definition of "disposal," 21 which categorically classifies energy generation, fuel production, and land application as "disposal," appears intended to align with established solid waste frameworks under federal and state law. 22 Yet the composition and risk profile of the covered materials—packaging, food service ware, and paper products that are nonhazardous— warrant a more tailored approach. Applying definitions and incentives designed for hazardous waste to nonhazardous packaging and related materials risks confusion for stakeholders subject to multiple regulatory regimes, creates practical barriers to compliance, and may inadvertently discourage the most responsible and sustainable management approaches for particular materials.

By drawing a strict line between "disposal" and "recycling" without acknowledging beneficial use options, the Proposed Regulations risk disincentivizing effective and environmentally preferable management methods for certain materials and could hinder broader waste reduction and climate objectives. In some cases, materials that are not suitable for mechanical recycling—such as those contaminated with hazardous substances or hard-to-recycle streams like certain plastic films— may be more sustainably managed through conversion to fuel or beneficial land application, particularly where recycling infrastructure is limited. Innovative processes that convert plastic films into diesel-like fuels and other valuable outputs can reduce waste and mitigate environmental risks associated with mismanaged plastics, even if they do not fall within a traditional recycling definition. Excluding such beneficial use pathways from compliance credit or reduced fee eligibility based solely on a restrictive "recycling" definition could penalize producers and service providers that have invested in alternative technologies aligned with SB 54's goals of waste reduction, circularity, and climate risk mitigation.

To better balance regulatory clarity with environmental innovation and real-world materials management, we respectfully recommend that CalRecycle adopt the following adjustments to the EPR framework:

 Recognize and Encourage Beneficial Use Pathways: Create a tiered or supplemental credit structure for material management methods, such as fuel production or beneficial land application, that demonstrably reduce environmental impacts, even if they are not classified as traditional recycling. This structure should include criteria for environmental performance, lifecycle impacts, and end-market integrity to ensure only bona fide beneficial uses qualify.

 Establish a Process for Technological Evolution: Provide clear definitions and evaluation criteria for emerging technologies and innovative practices, along with a periodic review mechanism to update what qualifies as "recycling" or as an eligible beneficial use. This will ensure the regulations remain technology-neutral and adaptive to improvements in performance, traceability, and environmental outcomes.

 Engage Stakeholders: Continue structured engagement with producers, recyclers, local governments, environmental organizations, service providers, and technology providers to ensure that compliance mechanisms are practicable, that measurement and verification are robust, and that the framework does not unintentionally discourage effective material management solutions.

We believe these refinements would support an EPR system that is environmentally sound and operationally feasible, while fostering innovation and enabling multiple, verifiable pathways to manage covered materials responsibly. In doing so, CalRecycle can maintain the integrity of SB 54's recycling objectives, reduce ambiguity for regulated entities, and accelerate progress toward California's broader sustainability goals.

Response to B-24-6

CalRecycle rejects this comment because statute clearly establishes a dichotomy: A material's ultimate end-of-life stage is either "recycling" or "disposal." Public Resources Code section 42041(aa)(2)(E) makes that distinction is unambiguous. With respect to the more specific recommendations, the first two are untenable because, on their face, would require CalRecycle to have authority to change the scope of what is "recycling" under statute. CalRecycle does not have that authority. Regarding the third recommendation, that is not a recommendation for a change in the regulations, but rather is a request that CalRecycle "continue structured engagement" with various stakeholders, so not further response is required.

Comment B-24-7

VI. Conclusion and Recommendations

We strongly support California's commitment to advancing a circular economy and recognize the critical importance of well-designed EPR regulations in achieving the State's ambitious environmental and public health goals. Nevertheless, we are concerned that, as currently drafted, CalRecycle's Proposed Regulations may inadvertently undermine these objectives by introducing unnecessary complexity, delegating broad regulatory authority to private entities without adequate public oversight, and imposing duplicative or conflicting requirements that could disrupt established, high-performing recycling and take-back systems. The proposed framework also risks discouraging participation by innovative recyclers and out-of-state service providers, impeding investment in new technologies, and creating regulatory uncertainty for both producers and service providers.

To address these concerns and ensure the success of SB 54, we respectfully urge CalRecycle to revise the Proposed Regulations to:

1. **Preserve Agency Oversight:** Ensure that ultimate regulatory authority and all key compliance determinations remain with CalRecycle, rather than being delegated to private organizations.

2. **Streamline Exemptions and Compliance:** Simplify and clarify exemption and compliance processes for materials already managed under effective stewardship or alternative programs, reducing unnecessary administrative burdens.

3. **Recognize Diverse End Markets:** Provide flexibility and clear, practical pathways for recognizing responsible end markets both within and outside California, supporting innovation and market development.

4. **Recognize and Encourage Beneficial Use Pathways:** Implement a technology-neutral, tiered framework that, alongside traditional recycling, recognizes verified beneficial-use pathways for management of nonhazardous covered materials (e.g., conversion to fuel or beneficial land application where lifecycle analysis shows superior environmental outcomes), with periodic review to incorporate emerging technologies and ensure EPR requirements do not disincentivize use of the most sustainable management practices for covered materials.

Additionally, we recommend that CalRecycle establish robust procedural safeguards — including transparent grievance and appeals processes—and maintain ongoing, meaningful engagement with all stakeholders to ensure that the final regulations are both operationally feasible and environmentally effective.

We appreciate CalRecycle's efforts to engage stakeholders and to consider these comments. Please do not hesitate to contact us with any questions or to discuss our recommendations in greater detail.

Sincerely,

Michael Sangobanwo, PE, CHMM, CSP.
Environmental Manager

cc: Chris Schlag, Nixon Peabody LLP
Ted Wolff, Nixon Peabody LLP

Response to B-24-7

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

B-25: North Pacific Paper Company LLC (Jay Simmons)

Comment B-25-1

By this letter, North Pacific Paper Company, LLC ("NORPAC") is responding to the request from the California Department of Resources Recycling and Recovery

("CalRecycle") for public comments on the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "Act") Permanent Regulations. NORPAC is an end market for paper recycling based in the Pacific Northwest and has historically received a limited volume of materials from California. Because its business operations are potentially subject to the Act, NORPAC has an interest in CalRecycle's rulemaking activities associated with the Act. Accordingly, NORPAC submits the following comments.

Section 18980.4

The Responsible End Market Criteria in Article 4 of the proposed regulations – particularly the requirement for annual compliance audits in section 18980.4.2(a) and annual verification in section 18980.4.2(c) – are overly burdensome and duplicative of existing requirements. NORPAC, like other paper fiber end markets, is already subject to and compliant with a comprehensive and rigorous suite of environmental and safety regulations under federal, state, and local laws. As such, NORPAC is already frequently inspected for air emissions, stormwater and wastewater discharges, emergency response, and hazardous waste management by governmental agencies. Permits and reports can be provided to the PRO upon request to verify a determination that on-site audits for environmental compliance, as well as an annual verification process, are not necessary. The audit requirements currently proposed in these California regulations would place an

unnecessary and costly burden on U.S. end markets, and may further require the improper disclosure of sensitive commercial information.

Moreover, NORPAC is already required to meet transparency requirements through robust independent and internationally recognized third-party programs, including the Forest Stewardship Council, Programme for the Endorsement of Forest Certification/Chain of Custody, and Sustainable Forestry Initiative. These programs utilize audit criteria that are commonly applied in other EPR programs to verify REM status. By providing these certification materials upon request, NORPAC anticipates that the PRO will be able to verify compliance with the REM standards without the need for any additional on-site audit.

These issues, and others, were highlighted in detail by CAA and CAA Oregon in the proposed REM amendment to the Oregon Program Plan, submitted to the Oregon Department of Environmental Quality on August 13, 2025. NORPAC stresses the validity and urgency of these industry concerns, and asks CalRecycle to ensure that the REM verification requirements in Article 4 of the regulations fully integrate these concerns.
Thank you for the opportunity to submit these comments on the Act's proposed regulations.

Response to B-25-1

Comment rejected for the reasons stated in response to comment O-82-55.

B-26: Dan Lett (Dan Lett)

Comment B-26-1

Thank you for the opportunity to provide comments on the proposed regulations implementing California SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. These comments are supplemental to the oral remarks submitted during the October 7 public meeting.

Bunzl Distribution recognizes CalRecycle for its leadership in advancing packaging sustainability and its continued engagement with stakeholders throughout the rulemaking process. We also value the implementation guidance CalRecycle has provided to help businesses account for materials and components.

As a large distributor of essential business supplies, Bunzl occupies a central position in the supply chain-connecting manufacturers with the businesses that use their products. While we do not control upstream or downstream material specifications, we are well-positioned to influence both ends. Our role enables us to support customers in continuously improving packaging and food service ware with minimal disruption to operations and cost.

The proposed regulations, specifically Section 18980.1.1 , do not fully resolve the practical challenges businesses like ours face in determining which upstream suppliers are considered "in the state" for EPR purposes. While pages 21-22 of the Initial Statement of Reasons provide a reasonable legal justification for the jurisdictional test used for enforcement, the
regulations offer no practical means for businesses to apply that test with confidence in real-world supply chain scenarios.

We work with more than one thousand suppliers to serve customers across California. One challenge we face in complying with California's EPR requirements is the lack of visibility into the jurisdictional status of upstream suppliers. Businesses generally do not share complete location information about their operations with one another, even when they are engaged in long-term commercial relationships. This lack of transparency makes it difficult to determine
which upstream suppliers are considered "in the state" for EPR purposes.

Page 4 of CalRecycle's discussion document related to the May 27, 2025 Informal Rulemaking Workshop indicated that complexity in the producer identification section would be addressed. However, the proposed regulations still lack guidance on the essential "in the state" scoping question. We also note that the Circular Action Alliance has not been able to provide interpretive advice on this issue, further underscoring the need for regulatory clarity.

Given these challenges, we respectfully urge CalRecycle to revise the "in the state" test to make it operationally feasible for businesses. Whether or not the rule is revised, we

also encourage the agency to provide practical tools, clear examples, and decision-making guidance to help regulated entities interpret and comply with the requirements. Specifically, we recommend:

- Developing and maintaining a public, regularly updated registry or database of entities deemed "in the state" for EPR purposes.
- Issuing additional guidance with clear examples, decision trees, or safe harbor provisions to assist businesses in applying the jurisdictional test.
- Considering enforcement leniency or a compliance grace period while interpretive uncertainties remain unresolved.

California's "in the state" producer definition highlights the complexity and variability of EPR compliance across states. We also encourage CalRecycle to maintain flexible regulatory provisions for Producer Responsibility Organizations to support harmonized reporting and fee payment deadlines with other state EPR programs, thereby minimizing the reporting burden on businesses.

Thank you for your thoughtful consideration of these comments and for your continued collaboration with stakeholders to ensure that the final regulations are both effective and practical.

Response to B-26-1

CalRecycle rejects this comment. With regard to the commenter's request that CalRecycle substitute a list of entities that are in the state in lieu of providing the standard by which an entity might be judged to be in the state, the comment is rejected because the purpose of the regulation is to provide rules of general application. With regard to the comment's suggestion that CalRecycle provide interpretive guidance in the manner described in the May 2025 materials or by the exercise of enforcement discretion, the comment is rejected because it does not pertain to the present rulemaking. In its May 2025 discussion document, CalRecycle explained its intention to "publish illustrations (outside this formal rulemaking)."

B-27: Bonduelle Americas (Jessica Adkins)

Comment B-27-1

On behalf of Bonduelle Americas, I am writing to provide comments on the latest regulatory proposal from California's Department of Resources Recycling and Recovery's ("CalRecycle") implementation of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Bonduelle Americas deeply appreciates this opportunity to participate in the regulatory process and share our concerns about

the significant economic and operational impacts this regulation will have on our ability to continue serving California consumers with affordable, healthy, plant-rich food products.

About Bonduelle Americas

Bonduelle Americas is the U.S. business unit of France-based Groupe Bonduelle, a 170-year-old family company and global leader in plant-rich foods. We are proud to be the first fresh produce company in the United States to achieve Certified B Corporation status, reflecting our commitment to environmental stewardship, social responsibility, and sustainable business practices.

Our California Footprint:

• **Major California Operations**: We operate manufacturing and processing facilities in Irwindale and Salinas, California, with significant agricultural operations throughout the state
• **Over 1,300 Employees in Califronia**: A substantial portion of our workforce is based in California, providing good-paying jobs in manufacturing, agriculture operations, quality assurance, and distribution
• **Grower Partnerships**: We work closely with California farmers and agricultural partners, supporting the state's vital agricultural economy
• **Critical Agricultural Infrastructure**: Our Salinas Valley operations are central to California's lettuce and fresh vegetable production, with seasonal operations coordinating between Salinas and Yuma, Arizona

We produce fresh-cut salads, salad bowls, and plant-rich meal solutions under the Bonduelle brand (previously Ready Pac), available in grocery stores and restaurant chains across California and North America. Our mission - to inspire the transition toward a plant-rich diet to contribute to people's well-being and planet health - aligns with California's environmental goals. However, we believe the current regulatory approach requires reconsideration.

Response to B-27-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, and refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately. See response to the continuation of this letter: B-27-2.

Comment B-27-2

Key Concerns

Consumer Affordability and Access to Healthy Food

The proposed EPR system will create substantial new costs, extensive packaging redesign expenses, production line retooling, and administrative compliance requirements. These costs will inevitably be reflected in retail prices.
Fresh produce operates on extremely thin margins. When healthy, convenient plant-based foods become significantly more expensive, California families, particularly lower-income households, will reduce consumption. This outcome contradicts both public health objectives and the environmental benefits of plant-based diets that the state seeks to promote.

The Baseline Doesn't Account for Market Growth

The source reduction baseline does not account for factors outside producer control: California's population growth, expanding e-commerce delivery of fresh foods, and increasing consumer demand for convenient, healthy plant-based meals. A static baseline that doesn't adjust for legitimate market growth means producers will face penalties regardless of genuine sustainability efforts.

Recommendations

We respectfully urge CalRecycle to consider a modified approach that achieves environmental goals while maintaining food affordability, safety, and agricultural viability:

1. Explore alternative policy approaches that emphasize voluntary innovation, collaboration, and measurable impact over mandated fees and penalties.
2. If the current regulatory path proceeds:
a. Ensure a comprehensive economic impact analysis is completed to assess potential effects on consumer prices before final implementation
b. Refine the source reduction baseline to reflect real-world factors such as population growth, e-commerce expansion, and the rising demand for healthy, plant-rich foods.

Conclusion

As a Certified B Corporation, Bonduelle Americas is deeply committed to environmental responsibility. We want to work toward solutions that reduce packaging waste. However, we believe the current EPR approach needs significant modification to avoid unintended consequences: higher food costs for California families, potential food safety compromises, and threats to California's agricultural sector.

We respectfully request that CalRecycle reconsider elements of this regulatory framework to ensure it achieves environmental objectives without imposing unsustainable economic burdens on consumers and the food system that serves them.

We remain committed to collaborating on approaches that protect both California's environment and its residents' access to affordable, safe, healthy food.

Thank you for considering our comments.

Response to B-27-2

CalRecycle rejects this comment to the extent it does not specifically identify or propose any changes to regulatory text or raise an objection related to the rulemaking process. To the extent the commenter raises concerns regarding EPR programs in general, this is outside the scope of the current rulemaking process, and no response is needed. Regarding the factors the commenter requests CalRecycle consider when establishing a source reduction baseline, these factors are subjective, vague hypotheticals, and again, no specific proposed changes or additions to regulatory text are provided, nor is there sufficient justification as to why these specific factors are necessary for implementation or enforcement of the Act. Further, statute does not indicate consideration of any such factors mentioned in the comment, nor does the commenter provide any statutory support in their comment. Implementation of these specific factors would exceed the statutory authority and requirements for establishing the source reduction baseline. The regulations already provide that the Department will update the source reduction baseline in future years consistent with the statutory requirements to ensure it best represents available data. For these reasons this comment is rejected.

B-28: Kaneka America Holdings Green Planet Division (Andrew Durant)

Comment B-28-1

Introduction

On behalf of Kaneka America Holdings Green Planet Division ("Green Planet"), I write to comment on CalRecycle's draft regulations to implement SB 54.

About Kaneka Green Planet

Before commenting, I would like to provide some background information on Kaneka and our Green Planet Division. We have worked for decades to develop biodegradable and compostable PHA/PHBH materials that can be made from a variety of sustainable feedstocks to make products and packaging that substitutes for conventional plastics. This long-term investment reflects a long-held view that the proliferation of single use plastics would create problems that needed to be addressed in part by developing substitute products that looked and acted like fossil-based plastics, but which behaved far differently at the end of life.

Over decades, we have developed over 50 different PHBH grades, which can be used as substitutes for the types of plastics that are not recycled today and, most likely, will never be recycled. Products made using our PHBH material can be both home and

industrially compostable and biodegrade completely in all environments without creating persistent microplastics. (See Attachment 1.)

Our PHA feedstocks are now used in a wide range of food contact and other applications around the world for which there are no reuse or reduction alternatives. In April 2024, for example, SONY announced that it would use Green Planet PHBH to replace polystyrene packaging - becoming the first electronics company to convert to a compostable alternative. Polystyrene is required under SB 54 to hit the 50% recycled rate by 2030, which seems tantamount to a ban, and we have developed a compostable alternative that has been validated by one of the largest consumer electronic brands in the world.

Earlier this year, a major Japanese pharmaceutical company adopted our PHA for press through packaging applications. In another first this year, Mizuno and Kaneka announced a joint development agreement to make biodegradable artificial turf blades and turf filler pellets for indoor applications. This demonstrates that PHAs have broad implications for applications in our everyday lives ranging from food and drink contact applications such as straws and food containers to blister packs for over-the-counter medications to the electronics that we buy and the fields we play on.

Both directly and through our memberships in the Biodegradable Products Institute, we have engaged in discussions with CalRecycle and members of the State Assembly and Senate to educate them on the benefits of PHA compostable materials, and to outline our own views on the need for significant investment in the type of composting infrastructure needed to divert food waste from landfills and to thereby significantly reduce one of America's greatest sources of greenhouse gas emissions.

Response to B-28-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set forth those recommendations. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail. This response does not address the attachment referenced in the comment because no such attachment was submitted.

Comment B-28-2

Comments

SB 54 was enacted in recognition of the failure of current systems and infrastructure to meet California's earlier mandate that 75 percent solid waste be source reduced, recycled or composted by 2020. According to the SB 54 preamble, only 5% of single use plastics are being recycled. SB 54 anticipates raising $5 billion over 10 years through a variable fee structure that will incentivize companies to migrate towards using less and using better materials. These fees will be used to improve the recycling and

composting infrastructure over this ten-year period, beginning in 2027, so that the new stair-step recycling goals set out in SB 54 can be met.

This ambitious mandate must be met with a visionary plan that understands that there will be a transition period between the current composting infrastructure and what will be developed over the next decade as new funding and products come into the compost stream. We strongly believe that the final regulations adopted by CalRecycle must closely follow science and the rigorous standards that flow from it. Just as we have invested decades to develop our resins that are now being used to make compostable products that replace conventional plastics, the final regulations that you adopt must look out over a longer-term horizon and provide time for composters to take advantage of the funds available to them from the fees that SB 54 will collect. As detailed below, we have grave concerns that, in several important and fundamental ways, the draft regulations fail to meet these requirements. These comments are reflective of the submission by BPI which we associate ourselves with.

Response to B-28-2

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations and does not raise an objection concerning the rulemaking process. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment B-28-3

1. In its latest draft CalRecycle has failed to define 'polymer' as described in AB 1201. As a result, non-compostable products filled with untested and unknown components might evade requirements for testing and certification, putting the integrity of soil in California at risk. As remedy, we've requested the definition of "polymer" in ASTM D883 be included in this regulation to reflect both the intent and the language in existing law. It should be noted that the ASTM D883 definition is referenced for the meaning of "polymer" in both ASTM D6400 and ASTM D6868.

Response to B-28-3

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment B-28-4

2. We are concerned about the treatment of fiber and paper products in Section 18980.4(a)(4)(B) and (C). As written, the relevant provisions do not require full "biological decomposition" of fiber and paper products. While a "marketable" compost product might ensure proper pathogen reduction, etc., such a threshold does not align with the conditions necessary to allow for product disintegration and biodegradation as established by ASTM standard specifications D6400 and D6868. This is especially true given that the relevant provisions do not exclude fiber and paper products that contain synthetic polymers derived from natural resources. Such polymers, and paper and fiber

products themselves, should be held to the same standards set for plastic products in the relevant section. To the extent that CalRecycle does not change these provisions to require complete degradation of all materials, it will be sanctioning a dangerous practice, causing substantial harm to human health and the environment, and acting contrary to the text and principles of SB54. We request that this section 18980.4(a)(4)(B)-(C) be removed.

Treating plastic and paper/fiber differently, as the draft regulations do, not only betrays science and how compostables are defined under California law (primarily by AB 1201), but it also suggests that it is acceptable to allow certain products to persist in finished compost piles based on the origin of their materials, not their end of life or certification.

We laud CalRecycle for making clear that claims of compostability claims made pursuant to the D5511 standard are misleading and contrary to California law and urge that this be reiterated at every opportunity.

Response to B-28-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and the recommended changes are not necessary to the implementation or enforcement of the Act. To the extent this comment suggests that the standard established for end markets that accept fiber or paper covered material in section 18980.4(a)(4)(C) is inadequate and recommends removal of sections 18980.4(a)(4)(B) and (C) from the proposed regulations, see the response to comment B-14-4. To the extent this comment suggests that paper and fiber products should be held to the same standards set for plastic products, no change is necessary. First, sections 18980.4(a)(4)(B) and (C) do not purport to establish standards for materials themselves; rather, they establish standards for end markets that accept such materials. Second, to the extent this comment might suggest that the same standards should apply to end markets that accept plastic, paper, and fiber materials, see the response to comment B-6-5. Finally, to the extent this comment is concerned with how compostable materials are defined under California law, including AB 1201, no change is necessary because sections 18980.4(a)(4)(B) and (C) do not purport to have any effect on whether items are eligible to be labeled "compostable." See the response to comment O-91-8.

Comment B-28-5

3. The Responsible End Market criteria treat plastic and paper products differently by requiring that plastic break down fully while omitting the same requirement for paper, requiring only that paper be processed with other materials. As a substitute requirement to ensure our end markets are responsible, we ask CalRecycle to employ the newly published ASTM test methods (D8618 and D8619) to ensure facilities provide optimal conditions for covered materials.

Response to B-28-5

CalRecycle rejects this comment. See the responses to comments B-6-5, O-75-12, and O-83-5.

Comment B-28-6

4. We are concerned about the exclusions for "de minimis" elements as the language is inappropriate and vague as it relates to compostable products. Unlike recyclable products that can often be deconstructed to remove non-recyclable components, any "size" or "weight" of non-compostable components within covered products, regardless of "weight or volume," can persist as a contaminant in a compost pile. Fortunately, SB 54 references existing California law (Chapter 5.7), including standard specifications such as ASTM D6400 and D6868 that already set pass/fail criteria to prove the performance of compostable items. This includes testing for biodegradation, which is a microscopic process and cannot be measured in a compost facility but rather requires laboratory testing as well as testing for toxicity. ASTM D6400 and D6868 are the appropriate standards, and an element should be considered "de minimis" only if it complies with these standards. We therefore request that all mention of "composting" and "compostable" be removed from this de minimis allowance, and that components small in weight and/or size are adjudicated as part of a whole product, as covered by existing law designed for this purpose. Alternatively, we request that the relevant provisions be revised to clarify that an element be considered "de minimis" only if the whole product still complies with ASTM D6400 and D6868. Without this clarity, the applicable provisions create uncertainty and allow for products to be considered compostable for purposes of the proposed regulations even if they do not meet these strict standards that ensure such products do not cause harm to human health or the environment.

Response to B-28-6

CalRecycle rejects this comment for the reasons provided in response to comment B-14-3.

Comment B-28-7

Closing

As I have stressed in this submission, we believe that policies based on objective standards should guide CalRecycle.

We appreciate the opportunity to provide these comments and stand ready to answer any questions that you may have.

Response to B-28-7

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-29: CR&R Incorporated (Noam Elroi)

Comment B-29-1

On behalf of CR&R Environmental Services, I thank you for the opportunity to comment on CalRecycle's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) regulatory process. Below are comments on the proposed revisions to the Draft Regulations released August 19, 2025.

Founded in 1963, CR&R is a Southern California-based waste and recycling collection company, serving more than 3 million people and over 25,000 businesses in Orange, Los Angeles, San Bernardino, Imperial, and Riverside counties. CR&R is contracted with approximately 55 local entities to provide waste and recycling services that support compliance with state laws. With over 2,000 employees, many of whom work under a collective bargaining agreement with Teamsters Local 396, CR&R has long been a leader in the development of climate-friendly, closed-loop waste collection and processing. CR&R owns and operate one of the largest Anaerobic Digestion facilities in North America, providing critical services for meeting organics diversion and short-lived climate pollutant reduction requirements of SB 1383 (Lara, 2016) and the waste stream circularity requirements of SB 54 (Allen, 2022).

Response to B-29-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-29-2

1. Financial Precarity from Decreased Revenue and Incomplete Reimbursement

a. **§18980.1 (a)(2)**

The proposed definition of alternative collection risks undermining the existing legal framework around franchise agreements and the exclusive right of franchise haulers to charge generators to collect discarded material (see California Waste Hauler Council's letter dated October 2025). If alternative collection is allowed to interfere with the current stream of material flowing through curbside collection to our Materials Recovery Facility (MRF), it would undermine the entire economic structure upon which our MRF and fleet was financed. Our investments in the very facilities and equipment that will enable SB 54 were financed based on the expected revenue made from selling all the recyclable material we collect. Alternative collection that interferes with or draws material away from our current curbside collection risks decreasing our revenue from material sales. This decreased revenue would have to be made up in garbage collection rates.

To ensure that local collection programs are not disrupted or undermined, alternative collection programs should not be implemented without approval of the relevant recycling service providers and local government.

Response to B-29-2

CalRecycle rejects this comment for the reasons stated in response to comments B-18-1, B-17-2, B-40-2, and B-42-1. Also, to the extent a producer responsibility plan fails to account for the commenter's concerns about effects on rates, such a plan may be subject to rejection because the plans must provide for funding in a manner that "allow[s] local jurisdictions to protect ratepayers from increased costs" (PRC section 42060(a)(1). A PRO's plan will be subject to scrutiny with regard to whether it will fund costs accordingly, and revisions may be required pursuant to section 18980.6.2(a), as well as pursuant to section 42051.1(b)(1), which requires plans to detail how the PRO will implement"[a]ctions and investments . . . in order to meet the requirements of [SB 54]."

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

Comment B-29-3

b. **§18980.8(g)(4)**

It is extremely difficult and expensive to secure loans and seed capital debt under the vague guarantee of "reasonable" periods for making determinations of covered costs and issuing reimbursement payments. If recycling service providers are required to begin collection of Covered Material Category (CMC) materials so promptly, more certainty is needed regarding when these costs will be reimbursed so that we can begin the process of securing funding for facility improvements. Reimbursement timelines should be established in regulation.

Response to B-29-3

Comment rejected. The commenter's objection is to the phrase "reasonable periods," but that phrase in section 18980.8(g)(4) is not a "vague guarantee" of when determinations of covered costs will be made. Rather, that provision imposes on the PRO the obligation to establish such a guarantee, thereby addressing the commenter's concern over certainty.

To the extent the commenter intended to object to delaying the establishment of "reasonable periods" until CalRecycle has approved a PRO plan, CalRecycle declines to make any change in response to that objection. The statute contemplates the PRO plan setting forth the details of the process it will use, and, until there is an approved plan, there cannot be any process for the PRO to make determinations of covered costs to begin with. To the extent any local jurisdiction or recycling service provider cannot satisfy its obligation to begin collection of covered material categories due to funding difficulties in the

meantime, the statute provides a remedy (exemptions pursuant to Public Resources Code section 42060.5(b)).
To the extent the commenter intended to object to affording the PRO any discretion to establish "reasonable periods" in its plan, CalRecycle declines to make any change in response to that objection. With input from the advisory board and the public at large, CalRecycle retains discretion to reject any plan that establishes periods for reimbursements that frustrate the purpose of the statute or create undue compliance challenges. The following statutory provisions ensure that the plan is sufficiently detailed and that CalRecycle can require the PRO to address deficiencies related to the reimbursement process:

• PRC section 42051.1(b)(1): Requires the plan to identify "actions and investments that the PRO will implement in order to meet the requirements of this chapter and address the needs and investments identified in the needs assessment."

• PRC section 42051.1(c)(2): Requires the plan to describe "How the PRO will support and achieve, and how the budget will fund, the collection, processing, recycling, or composting of . . . covered materials to meet the requirements of this chapter."

• PRC section 42051.1(g)(1): "The plan shall include a process for determining and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter[.]"

For a plan to satisfy these requirements, it must address concerns like the one raised by the commenter. In particular, PRC section 42051.1(g)(1) requires the plan to establish a "process for determining and paying the costs," and multiple other statutory provisions firmly establish that the PRO's (or Independent Producer's) statutory obligations include providing funding for local jurisdictions and recycling service providers necessary for that success. (See, for example, PRC sections 42051(b)(2)(B)(ii) and 42051.1(g)(1), and (j)(1)(B).) For a plan to identify how the PRO will meet its statutory obligations—the bedrock requirement established by section 42051.1(b)(1)—payment and other cost-related processes necessarily must ensure that payments are made in a timely manner.

Comment B-29-4

c. **§18980.8(g)(6)**

The establishment of performance-based reimbursement likely only stands to hurt operators and those making the investments that enable circularity. SB 54 clearly states that haulers and local governments are to be fully reimbursed for the costs associated with implementing increased diversion, not that they are to be reimbursed based on their ability to fulfill the ambitions of the Producer Responsibility Organization (PRO).

Payments based on performance could lead to recycling service providers making good faith investments to help achieve the goals of SB 54 and then losing money if the performance-based formula doesn't lead to as much reimbursement as the recycling service provider invested. For example, a recycling service provider could invest in a new sorting line to manage film plastic but, because of the practical difficulties of sorting the material, the shifting markets, or issues with generator compliance, not end up diverting as much material as the PRO wanted. If reimbursement was based on performance, the recycling service provider may be left with the remaining costs. Whereas, if reimbursement was for the entire cost of investments made, the recycling service provider would not run this risk. Performance-based reimbursement should only be an option that recycling service providers and jurisdictions can opt in to, not a structure the PRO can impose.

Response to B-29-4

Comment rejected. Section 18980.3.2(g)(6) unambiguously states that a performance-based approach must be optional. They must be in addition to a claims-based approach described in the preceding paragraphs.

Comment B-29-5

2. Compostability

a. **§18980.3.3, § 18980.4.**

Article 4, § 18980.4 suggests that bioplastics may only be sent to end markets where they completely breakdown. Along with the clarifications in Article 11, §18980.11.1, recent changes seem to suggest that if there are no viable composting end markets that can break down bioplastics in their current system, then recycling service providers can apply for an exemption. CR&R greatly appreciates the flexibility.

We also appreciate the update to the standards for being labeled compostable. The connection to the standards of the National Organics Program (NOP) through the Public Resources Code is very important for the realities of the California compost market. However, we would like to emphasize that products that are not made of NOP-compliant inputs do not have responsible or secure end markets in California, as almost all commercial composting operations adhere to the NOP standards. Even CR&R's state-of-the-art anaerobic digester is incompatible with "compostable" plastics. Further, if our system was somehow modified to break them down, which they currently are not capable of doing, the existing end market for digestate would no longer want the material. End markets are extremely critical to the viability of the materials we produce. This should be considered when giving exemptions for a lack of end markets.

Response to B-29-5

CalRecycle rejects this comment for the reasons stated in response to comment O-47-6.

Comment B-29-6

3. PRO Control of Exemption/Extension Process

a. **§18980.11.1 (d) & (e)**

We appreciate the exemption/extension process that CalRecycle has created in this draft, specifically the sentence that the department shall approve an application if it shows that inclusion of a material in the collection and recycling programs is unpractical. However, we worry about the PRO's apparently outsized role in making these determinations. The PRO obviously has a strong interest in rejecting applications for exemptions/extensions, so the regulation should clearly state that the department is to make its own determination on applications based on the available facts about the current end market and sorting practicalities for a given material.

Response to B-29-6

Comment rejected. No further clarification is necessary because nothing in the proposed regulation purports to give authority to the PRO over the approval or denial of exemption applications, and section 18980.11.1(e) unambiguously states that CalRecycle is the one that approves exemptions, based on the content of applications. The commenter does not explain how they read the text to have the opposite effect.

Comment B-29-7

4. Enforcement

a. **§18980.13 (b), §18980.13.1, PRC §42081 (a)(1)**

The proposed regulations subject recycling service providers to SB 54 enforcement, including penalties of up to $50,000 per day for each covered material category that is not included in a local collection program. We greatly appreciate the work that has been done on the extension and exemption process; nonetheless, the scale of the proposed penalties is extreme – much higher than those included in SB 1383 – and recycling service providers are not the target for responsibility nor enforcement under SB 54. This is in direct conflict with the intention of SB 54 to make recycling service providers and jurisdictions whole for the costs to recycle and compost covered materials.

We recommend that CalRecycle clarify that any fines to recycling service providers would be graduated, meaning that the upper fine amount ($50,000) is the maximum that would be assessed and implemented only after other compliance assistance steps and smaller fines were imposed by the department.

Response to B-29-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not

necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a recycling service provider, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant recycling service provider consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant recycling service provider will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment B-29-8

CR&R has been a pioneer in circular economy waste collection and processing in California for decades and understands the role recycling service providers play in helping local governments and the PRO achieve the goals of SB 54. Again, on behalf of CR&R, I greatly appreciate your consideration of our comments.

Response to B-29-8

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-30: Consumer Technology Association (Ally Peck)

Comment B-30-1

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments for the implementation of California’s Senate Bill 54: Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). We appreciate the opportunity to offer feedback on the implementation of the law and CalRecycle’s engagement with stakeholders during this process.

CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than

18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design and product stewardship.

Electronics are durable goods and our interests are unique from those associated with the traditional consumer packaged goods that you find at the grocery store. CTA has attached examples of EPS packaging used by the electronics industry, which is necessary for the safe delivery of products.

Response to B-30-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-30-2

Exclusion of Certain Types of Packaging (18980.2.2)

CTA objects to section 18980.2.2(a)(3)(A) regarding the requirement for goods to be covered by an express, written five-year warranty with no exclusion for ordinary wear and tear. This requirement goes outside the scope of the law and is burdensome for manufacturers. A five-year warranty should not be the condition for packaging to be regarded as reusable. Warranty periods are not necessarily tied to product lifespan. **CTA requests that section 18980.2.2(a)(3)(A) be stricken**.

CTA believes that the current scope of “de minimis” is unclear and too narrow. While some polymerbased coatings, adhesives, and inks are assumed to qualify, non-plastic small paper-based components, such as paper lassos or small functional items below 2”x2”, may be excluded from recyclability and therefore deemed non-compliant by 2032. CTA believes that if these components are not explicitly included as a de minimis product, they will be unintentionally banned despite their ability to replace plastic parts and reduce overall plastic use. Additionally, it may trigger producers to use more materials, generating more waste, in order to increase packaging component size.

CTA requests the following provisions:

Section 18980.2.2(b): “Pursuant to subparagraph (A) of paragraph (4) of subdivision (s) of section 42041 of the Public Resources Code, material that is part of, or directly connected to packaging, or that performs a packaging function but is of de minimis weight or volume is not itself packaging for purposes of the Act.”

Section 18980.2.2(b)(1)(B): Modify “independent plastic component” to: “A packaging component, or group of components, that wholly or ~~partially~~ mostly comprises plastic…”

Section 18980.2.2(b)(2)(D): “Designating it as having a de minimis weight or volume enables usage of recyclable, compostable, reusable, or refillable packaging, or enables

the replacement of a plastic component with a functionally equivalent non-plastic material."

Additionally, de minimis could include a clear quantitative target for regulatory certainty. As a reference, de minimis conditions could align with European Packaging and Packaging Waste Regulation, which allow "de minimis" exemptions for "any plastic part representing less than 5 % of the total weight of the whole packaging unit."1

In order to provide better clarify to producers and encourage the transition to more recyclable materials, CTA requests that CalRecycle publish a pre-approved list of common "de minimis" components, including polymer-based adhesives, coatings, varnishes, inks, etc., where such components do not prevent recycling of the whole packaging and meet the other requirements.

These proposals allow CalRecycle to maintain stringent environmental standards while avoiding the unintended elimination of fiber-based alternatives that replace plastic components but fall below current recyclability definitions due to size or form. Additionally, further alignment with SB 343's Material Characterization Study (MCS) categories (e.g., "Other Mixed Paper", that allows for small paper components identifiable as paper and for minor amounts of non-paper materials) helps integrate recycling system realities with regulatory definitions, enhancing clarity and consistency across Californian programs.

Response to B-30-2

CalRecycle rejects this comment. Regarding the warranty described in section 18980.2.2(a)(3)(A), a warranty is described as sufficient but not necessary. Rather, the first sentence of that provision expressly states that the "totality of the circumstances" must be considered.

Regarding the de minimis provisions of 18980.2.2(b), CalRecycle declines to include any components as "explicitly included as a de minimis product." To be considered of de minimis weight or quantity, it is axiomatic that a component must satisfy the burden set forth in statute, which states that de minimis status must be "as determined by the department." Making categorical determinations like the one sought in regulations, as opposed to through a case-specific examination based on a statutory interpretation in regulations, would be contrary to the express language in statute and would be impossible to reverse without the extraordinary effort of undertaking a new formal rulemaking. CalRecycle also rejects the specific textual changes the commenter proposes. Adding the phrase "or that performs a packaging function" to 18980.2.2(b) is unnecessary because any material that "performs a packaging function" is already "part of, or directly connected to packaging"; the proposed text would be redundant. Changing "partially" to "mostly" in 18980.2.2(b)(1)(B) would unlawfully contradict statute: Public Resources Code section 42041(s)(4)(A) prohibits "independent plastic components" from being excluded, and 42041(u) defines "plastic components" as those "made partially or entirely of plastic." Lastly, modifying 18980.2.2(b)(2)(D) as requested would mean that contribution to source

reduction would treat any effects on recycling or composting as irrelevant. Although source reduction is at the top of the hierarchy stated in Public Resources Code section 40051, that does not imply that all items below it should be treated as irrelevant. To the contrary, the presence of recycling and composting in that hierarchy requires that they be considered. Therefore, the de minimis provisions in the proposed regulation accounts for all parts of the hierarchy, including source reduction, which is accounted for in subparagraph (D) (giving consideration to enabling usage of reusable or refillable packaging).
Regarding the proposed quantitative target, CalRecycle declines to adopt a rigid five-percent threshold because considering satisfaction of such a rigid, arbitrary condition as sufficient would have unpredictable, potentially absurd results. Five percent of any component by weight would be a large amount of material for large components and would require ignoring serious problems presented by such amounts. That approach would contradict the traditional meaning of "de minimis": that it encompasses things so small or having so low value that it would be unreasonable or impossible to account for.
Lastly, the proposed regulations already include a process for CalRecycle to do what the commenter requests: publish a list of components that CalRecycle deems to be of de minimis eight or volume. No revision is necessary for CalRecycle to fulfill that request, should CalRecycle find that doing so is possible.

Comment B-30-3

Exemptions for Certain Covered Materials (18980.2.4)

CTA requests that a group of producers, such as a trade association, be able to submit a request for an exemption in order to reduce the burden on CalRecycle to review near identical submissions from a large amount of producers regarding a single type of packaging. CAA is currently the PRO and it's board is only comprised of traditional CPG companies – no durable goods manufacturers that are not retailers have been granted a seat. For this reason, CTA requests trade associations be included so that other industries can appropriately advocate for their self-interests.

CTA requests the that Section 18980.2.4(a) be modified to "~~Only a~~ A PRO, Trade Association or an Independent Producer may submit…"

Additionally, CTA would like to caution CalRecycle from specifying that exemption applications contain granular levels of detail, because it will increase the number of applications that are submitted and thus require more time and effort for CalRecycle to review.

While we agree with the availability of an exemption process, we believe that the current regulations are overly burdensome because they require too much detail from producers to complete the application. **We request that in subsection (c)(4)(A), provisions (iv), (v), (vi), (vii), and (viii) be stricken (pages 3738). We do not believe a producer should be required to propose a detailed phase in plan of the material**

for the which the exemption is being requested and request all references to the phase in plane as outlined in clause (viii) of subparagraph (A) be stricken.

We request that in subsection (c)(4)(B), provisions (ii), (iii), (iv), (v), (vi) (pages 38-40) be stricken. While we agree that the information included in these subsections is important, we do not believe that producers will have access to all this information and be able to properly complete the application, thus this information should be optional.

CTA believes that subsection (f) is repetitive and requests it be stricken (pages 42-43).
If subsection (h) remains, which we request it be stricken, we request that language be included that requires the Department to notify the applicant 120 days prior to the expiration of their exemption that a renewal is required.

Response to B-30-3

Comment rejected. Regarding the first proposal, that a group of producers be able to submit a request for an exemption, CalRecycle declines to make that change for the reasons stated in response to comment B-30-4.

Regarding the general "caution" against granular levels of details, that suggestion is vague and cannot be responded to with particularity. Because of the potentially drastic effect that exemptions may have, requiring significant details to justify any exemption is appropriate. If the justification for an exemption is especially clear and strong, providing the level of detail needed to justify the exemption according to the standards described in 18980.2.4(f) will naturally be less burdensome. Moreover, to the extent a commenter is unable to present information and analysis for any particular factor, they are free to indicate as such and explain that inability. The proposed regulations do not preclude CalRecycle from concluding that an exemption is justified despite the applicant's inability to fully evaluate any one factor.

Regarding the proposal that subsection (c)(4)(A), provisions (iv), (v), (vi), (vii), and (viii) be stricken, CalRecycle declines to make that change for multiple reasons. First of all, a phase-in plan is not required generally; as explained in (c)(4)(A)(viii), no phase-in plan is needed if one would be unfeasible or unnecessary to prevent interference with achievement of the statute's express purpose and core requirements. The commenter offers no explanation (other than that they "do not believe" it should be included) for why this commonsense provision should be deleted. Regarding the other clauses mentioned (clauses (iv), (v), (vi), and (vii)), the commenter asserts, with no explanation, that they require "too much detail." Failing to explain that assertion is brazen considering the stakes of granting exemptions under PRC section 42060(a)(3) and (4). Those exemptions grant producers the right to disregard the core requirements of SB 54: that covered materials be recyclable or compostable and achieve certain recycling rates (PRC section 42050). In other words, the exemptions have the exact opposite effect that statute requires the regulations to achieve

(see PRC section 42060(a)). Given that juxtaposition, the regulations must ensure that exemptions are only available where an application firmly establishes that, on balance, the exemption serves, rather than hinders, the statutory goals stated in PRC section 42060(a). The regulations would fail the basic mandate set forth in PRC section 42060(a) if they were to allow exemptions that are not actually necessary.

Regarding the request that (c)(4)(B), provisions (ii), (iii), (iv), (v), (vi) be stricken, those provisions are, as the commenter concedes, important and relevant. The commenter's objection is not that the information required is irrelevant, but rather that producers may not have access to it, so that the information should not be "part of the application itself." In effect, the commenter asserts that producers should not be required to develop or obtain access to the information necessary to justify receiving the benefit of an exception from state law. But the commenter provides no explanation, and CalRecycle is unaware of any, for why a producer could not do so, nor does the commenter suggest who, if not the producer, is better situated to obtain and present the information that the commenter concedes is important. The core function of the law is to assign responsibility to producers, and the provisions at issue appropriately assign to producers the burden of justifying why CalRecycle should limit that responsibility.

Moreover, for some of the provisions listed by the commenter, it is untrue that the producer would not have access to the required information. The commenter suggests deleting substantially all of section 18980.2.4(c)(4)(B), but those provisions concern the difficulties that the producer itself faces in establishing an alternative collection programs. A producer necessarily either has the required information or is well-situated to acquire or develop it.

Regarding the proposal to strike subdivision (f), that provision is not repetitive of any other provision, and the commenter provides no explanation for its contention otherwise. Notably, it identifies no provisions of which it is repetitive. Regarding subdivision (h), the commenter offhandedly requests that that subdivision be stricken, with no explanation as to why; CalRecycle declines that request because addressing how exemptions could be renewed is a commonsense, necessary element of the exemption process. Regarding the request that applicants be notified that a renewal is required, that provision would unnecessarily burden CalRecycle with a ministerial task; no explanation is given for why applicants would need notification of a deadline of which they were put on notice when the exemption was granted.

Comment B-30-4

Scope of Exemptions (18980.2.7)

CTA appreciates that an entire class of products can apply for an exemption. For reasons outlined in response to Section (18980.2.4), CTA requests that a group of producers, such as a trade association, be able to submit exemption applications on behalf of producers.

Response to B-30-4

Comment rejected. Because it would be impracticable for CalRecycle to evaluate all exemption requests in a reasonably timely manner without some mechanism to facilitate meritorious, non-repetitive applications, section 18980.2.4(a) was added to require applications to be submitted by a PRO on behalf of its participating producers or by an Independent Producer. Considering applications by a trade organization would not provide the same benefit because there would be no assurance that the trade organization adequately represents producers it purports to represent. In contrast, a PRO necessarily represents a large number of producers, and producers are required to join a PRO or be Independent Producers. In effect, the PRO is authorized to fill the role the commenter suggests for groups of producers and trade organizations. Moreover, nothing in the proposed regulations prevents any producer or trade organization from collaborating with a PRO regarding an exemption application.

Comment B-30-5

Recyclability (18980.3)

Across various international and domestic standards and guidelines, there is consistent recognition that fiber-based materials remain classified as paper even when they contain coatings, adhesives, or inks, provided they are predominantly composed of fiber and meet recyclability criteria.

Response to B-30-5

Comment rejected. This comment identifies "international and domestic standards and guidelines" but does not explain why they are a concern, how they relate to the proposed regulations' recyclability provisions, or how the commenter proposes the regulations be revised. To the extent the commenter intended to suggest that certain materials' recyclability should be subject to different standards than those required under Public Resources Code section 42355.51(d), CalRecycle rejects that suggestion because statute expressly requires evaluation of recyclability to apply those standards. To the extent the commenter intended to suggest that certain products should be classified differently than covered material categories lists that CalRecycle has published to date, no response is required because those publications are not part of this rulemaking.

Comment B-30-6

Recyclability of Certain Covered Material Categories Identified by the Department (18980.3.1)

On the topic of recyclability labeling at subsection (c)(4)(B), CTA would like to reiterate previous comments we have made to CalRecycle. The presence of any chasing arrows symbol on an electronics package is for the sole purpose of compliance with legal requirements (including those in foreign countries and territories) and is not a marketing claim. The ban on chasing arrows will create supply chain challenges for any industry

the manufacturers goods on a national or global scale. Most importantly, it will disproportionately affect the electronics industry over any other industry in a negative manner because of the global labeling mandates for batteries and electronic waste. **CTA requests that electronic products and their packaging be exempt from any regulation that limit or ban the use of chasing arrows symbols.**

Additionally, CTA believes that the prohibition on use of recycling symbols required by laws of other countries and the requirement to have PCR content certified by an accredited third-party violates Article 2.1 (Technical Barriers to Trade) by the WTO:

“Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.”

Response to B-30-6

CalRecycle rejects this comment because it does not suggest any specific changes to the proposed regulations or raise issues related to the rulemaking process. To the extent the commenter intended to propose that the regulations expressly state that there is no limit or ban on the use of chasing arrows on particular products, no change is necessary because neither the statute nor the proposed regulations purport to impose such limitations. The commenter's concerns are not relevant to compliance with any provision of SB 54 even if, despite the limitation in PRC section 42355.51(c)(2), some other California law bans the chasing arrows in circumstances where federal law requires it. Section 18980.3.1(c)(4)(B), for example, does not limit or ban the usage of the word "recyclable" or the "chasing arrows" symbol; rather, it requires examination of the effect of deeming that usage lawful because that effect would be directly relevant to the exemption set forth in PRC section 42061(a)(3)(B). Likewise, if covered material fails to satisfy the criteria to be considered "recyclable," it violates PRC section 42050(b) (unless it is compostable), but whether that covered material was labeled using the "chasing arrows" symbol would be irrelevant to that violation.

Comment B-30-7

Methodology for Recycling Rate Determination (18980.3.2)

In order to achieve the required source reduction targets, electronic packaging may increase the number of components in order to substantially decrease the overall weight. For example, electronic products can reduce their packaging material by transitioning from single large block of EPS or molded fiber to four smaller corner pieces, reducing the amount of total material but increasing the components. CTA would like to emphasize that component number is not an accurate measure of total packaging.

CTA agrees with the determination in subsection (c) that the “(r)ecycling rate shall be calculated based on the weight of materials, rather than volume or number.”

CTA also agrees with subsection (d)(1), that a single recycling rate be attributed to all components that are not detachable. However, we would like to emphasize that electronics manufacturers are not tracking metrics based on this level of detail and may not be able to report on the differing levels of nondetachable material components.

Additionally, Section 18980.3.2(d)(2) indicates that recycling rates should be calculated for each detachable component. Currently, manufacturers of electronics are not tracking metrics based on this level of detail. CTA disagrees with this specific methodology. **We request that 18980.3.2(d)(2) be stricken.**

CTA disagrees with subsection (e) that the inability to meet the granular level of reporting required by CalRecycle should automatically be marked as “unreported” and be assumed to not meet the required rates. CalRecycle should create reporting procedures that are achievable based on the current data metrics that companies are tracking. CTA believes this requirement will disproportionately affect small businesses and industries such as the durable goods that require more complex packaging. **We request that 18980.3.2(e) be stricken.**

Response to B-30-7

CalRecycle rejects the recommendation to remove 18980.3.2(d)(2). The commenter's only justification for the request that it be removed is that certain manufacturers currently "are not tracking metrics based on this level of detail." No justification is given with respect to achieving the purposes of the statute, including calculating recycling rates so that the rates accurately reflect the degree to which materials get recycled. CalRecycle also rejects the request that 18980.3.2(e) be removed. The core feature of the statute (and any EPR law) is that producers, through the PRO and otherwise, are responsible for implementing a plan for reducing packaging waste and increasing recycling and composting of packaging. Solving challenges related to reporting the amount of packaging in use is an inherent part of that responsibility.

Comment B-30-8

Third-Party Validation (18980.3.4)

CTA opposes the requirement that an independent third-party certification be needed to verify postconsumer recycled content. We believe that requiring third parties to be approved by the Department will be challenging for global companies that manufacture and package their products outside the United States, especially in countries where English is not a first language.

We ask CalRecycle to provide additional information on how they intend to communicate with international third-party validating entities and not discriminate based on the race, language or location of a supplier of post-consumer recycled content.

For these reasons, CTA believes that a certificate of compliance from suppliers should qualify as meeting the third party certification requirement.

CTA requests that Section 18980.3.4(a) be modified to “(a) A PRO shall not apply the source reduction credit based on incorporation of postconsumer recycled content, as described in section 42057(a)(2)(B)(i) of the Public Resources Code, unless the alternative compliance formula described for doing so has been proposed and approved as part of a PRO’s plan in accordance with this section or a certificate of compliance has been provided from a supplier.”

Response to B-30-8

Comment rejected. The commenter's requests conflicts with the statutory requirement in PRC sections 42053(e)(1) that requires third-party validation entities be approved by CalRecycle. Further, section 42057(a)(2)(B)(i) of the PRC requires third party validation be undertaken by "a third party, such as the Association of Plastic Recyclers, through its APR Postconsumer Resin Certification Program, or a similar third party approved by the department...", reiterating the statutory requirement that a third party must be approved by the department. Allowing a certificate of compliance provided by the supplier would again conflict with statute. Finally, the section 18980.3.4(b) of the proposed regulations implements that third-party validation provision of statute such that a producer responsibility plan (also subject to approval by the department) may rely on the Association of Plastic Recyclers validation program for purposes of section 42057(a)(2)(B)(i) or propose a different third-party validation entity for CalRecycle's approval. As such, the commenter's request to change the proposed regulatory text to authorize use of a certificate of compliance from a supplier conflicts with statute, and as such, no change is appropriate.

Comment B-30-9

Producer Compliance (18980.5)

CTA believes the 30-day timeline for producers to register with CalRecycle, register with the PRO, and report 2023 baseline packaging data, including current CMCs, plastic components and weight is unreasonably short. While CAA and those companies funding CAA may be supportive of this timeline, it is not a timeline that is in the best interest of the entire packaging industry.

This 30-day timeline is unfeasible, especially given the lack of finalized guidance on key concepts such as “plastic components” and “de minimis” classifications. Guidance as to what constitutes a plastic component unit and how to consider their weights will not be available. Producers will be forced to submit rough or exaggerated baseline data without clarity on methodology or definitions. It is also possible that sales data from 2023 will not be readily available at the required level of granularity.

CTA requests that the deadline for submitting 2023 baseline packaging data to be no sooner than 90 days after final guidance is published including:

o The definition and methodology for calculating “plastic components” units and weights.

o The publication of a reference list of components or groups of components that qualify as “de minimis.”

Extending the timeline and clarifying expectations would improve data quality, reduce reporting errors, and enable better environmental tracking. Without this, producers may overreport plastic components (e.g., assuming every adhesive or coating is an individual component), resulting in inflated baselines that complicate source reduction targets. This approach would better align with the law’s goals of meaningful reporting, transparency, and measurable progress toward plastic waste reduction. CTA requests the following update:

Section 18980.5.(d): “Each producer that applies to become a participant of an approved PRO pursuant to subdivision (b) of this section shall, ~~at the time of its application~~, submit to the PRO that producer’s supply data for calendar year 2023, no sooner than 90 days after the effective date of this chapter. For purposes of this subdivision, “supply data” means the information described in section 18980.10.2.”

Response to B-30-9

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1.

Comment B-30-10

NEW SUBSECTION 18980.5(e)

CTA respectfully request that the regulations explicitly include a provision allowing producers to audit the operations and reporting of the Producer Responsibility Organization (PRO) to ensure transparency, accuracy, and compliance with SB 54 requirements. Such audits would provide producers with assurance that collected data, recycling rates, and associated fees are being properly managed and reported. CAA is supposed to be a collective representation of the producers, yet CAA consistently has failed to give producers detailed information on their operating systems. CAA has claimed to consult with CalRecycle on implementing the law, yet has not solicited feedback from their registered producers for information. CTA requests that more CAA be required to provide greater transparency to the producers it represents. Furthermore, the CAA Board is comprised of a limited number of homogeneous producers, unfairly marginalizing the durable goods industry.

Including this provision would enhance accountability, strengthen trust in the program, and support effective implementation of producer responsibility in California

Response to B-30-10

CalRecycle rejects this comment to the extent the commenter's submission concerns proposed changes or additions that are already sufficiently addressed and satisfied throughout both the Act and the proposed regulations, ensuring transparency, third party audits, and the Department's ability to request records, conduct investigations, etc., making the addition unnecessary and duplicative.

Portions addressing the audits, reporting, and investigations include, but are not limited to sections 18980.3(f), 18980.4.2, and 18980.9 of the proposed regulations, as well as section 42080(a) of the PRC which states in relevant part " [t]he department may conduct investigations, including by inspecting operations, facilities, and records of producers and PROs and by performing audits of producers and PROs, to determine whether entities are complying with the requirements of this chapter." Further, no substantive response is required to the portion of the comment addressing the commenter's opinions regarding CAA as this raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. As such, no further response is necessary.

Comment B-30-11

Eco-modulated Fees (18980.6.7)

Section 18980.6.7(i) asserts that a fee will be charged to producers that use CMCs containing a chemical listed under section 25249.8 of the Health and Safety Code, this translates to a chemical listed under Proposition 65 (Prop 65). It would be pertinent for CalRecycle to understand that there are close to 1,000 chemicals listed under Prop 65, and that Prop 65 is an exposure-based not concentration-based law. CTA believes that this requirement is not only unduly burdensome for manufacturers but goes beyond the intent and text of the law. **Therefore, CTA requests this section be stricken from the draft regulations**.

In Section 18980.6.7(j), it is proposed that a credit be given to producers that use renewable materials (not fossil fuel-based plastic). We request that a credit also be applied for the use of recycled content. Using recycled plastic has a better net effect on the Earth's climate than using the materials outlined in subjection (j) "wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat". CTA proposes that life cycle assessment be used to substantiate the environmental benefits of these materials over others and the basis for these credits.

Response to B-30-11

CalRecycle rejects this comment. To the extent this comment recommends striking section 18980.6.7(i) from the proposed regulations, see the response to comment B-11-9. To the extent this comment recommends including a fee credit for the use of recycled content, no change is necessary because such a credit is already established under PRC section 42053(e)(1). Finally, to the extent this comment recommends requiring the use of life cycle assessment to substantiate the environmental benefits of renewable materials as a basis for fee credits, the proposed regulations are consistent with the requirements of the Act and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule that includes producer fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e). As such, under PRC section 42053(e) and sections 18980.6.7(b), (f), and (j) of the proposed regulations, the PRO retains the discretion to determine and charge

eco-modulated fees in a manner that it deems appropriate so long as it is consistent with the requirements of the Act. No further change is necessary.

Comment B-30-12

Source Reduction Baseline Report and Annual Reports (18980.9)

CTA rejects the revision that all reporting entities submit a source reduction baseline report in 2026 as opposed to 2027. We request that this revision be rejected and the 2027 date be restored.

CTA requests that the source reduction baseline report include only the total amount of plastic covered material by weight and not by number of components. As previously stated in earlier sections, producers are not currently tracking data on this level of granularity and are not required by other EPR laws to report by the number of components. Reporting on number of components will be unduly burdensome for producers.

Additionally, CTA believes that producers will have trouble supplying historical data to supplement the reporting requirement for 2023 as the baseline year.

CTA urges the regulations to acknowledge the significant complexities and ambiguities associated with tertiary packaging in global electronics supply chains. Tertiary packaging—such as pallets, crates, and shipping containers—often passes through multiple tiers of manufacturers, distributors, and retailers, creating uncertainty over which party is responsible for reporting under SB 54. Without clear guidance, there is a risk of double reporting and inconsistent accounting, and producers often lack visibility into when and where portions of the tertiary packaging are ultimately disposed. **We respectfully request that the regulations provide additional guidance on how reporting for tertiary packaging should be conducted, including clear delineation of responsibilities across the supply chain, to ensure accurate reporting, reduce redundancy, and support a practical, enforceable framework for extended producer responsibility.**

Response to B-30-12

To the extent the commenter objects to reporting entities submitting a source reduction baseline report in 2026 as opposed to 2027, CalRecycle rejects this comment for the reasons stated in the response to comments B-27-2, I-63-15, O-48-5, and O-41-4.

Regarding the remainder of the comment, CalRecycle rejects the commenters proposed revision of section 18980.9 to eliminate reporting by number of components as section 42057(a)(1) expressly requires in plain statutory language that producers achieve an aggregate 25 percent reduction "by weight and by number of plastic covered material" by January 1, 2032. Accordingly, the Department is statutorily obligated to collect data "by weight and by number of plastic covered material" to establish the baseline against which reductions will be measured.

Further, CalRecycle provides for flexibility and reasonable accommodations to track individual component counts through estimation methodologies supported by verifiable data sources as already noted in section 18980.9(c)(2) of the proposed regulations which establishes a balance to minimizes burdens while maintaining the integrity of statutory measurement requirements.

Finally, regarding the commenter's concerns on tertiary packaging, for any clarification on tertiary packaging that is not already included in statute, including section 42041(s)(3) of the PRC which establishes that tertiary packaging is within the scope of covered material and Chapter 11.1 and Article 9 of the proposed regulations already provide sufficient comprehensive guidance; however, if additional clarification is required. the Department may provide additional guidance documents to address any legitimate and necessary concerns. As such, no further changes to the regulations are necessary at this time. Please see also responses to B-30-2 and B-30-7 regarding responses to similar comments.

Comment B-30-13

Data Report Contents (18980.10.2)

As we previously stated in earlier sections, CTA believes that reporting should be based only on weight of material and not number of units. Reducing the number of units does not necessarily decrease the total amount of plastic used and thus weight should be the only metric of measurement. Additionally, producers are not currently tracking or required to report on number of units and the requirement to do so would be burdensome. **Thus, CTA requests subsection (a)(1)(B) be stricken.**

Response to B-30-13

CalRecycle rejects this comment for the reasons stated in response to comment B-30-12.

Comment B-30-14

Thank you again for the opportunity to provide these comments for the implementation of California's SB 54: Plastic Pollution Prevention and Packaging Producer Responsibility Act. We would welcome further engagement with CalRecycle. If you have any questions about our above comments, please do not hesitate to contact me at apeck@cta.tech.

Response to B-30-14

CalRecycle rejects this comment, and no response specific to this portion of the commenter's submission is necessary as it does not proposed any changes to the regulations or objections to the rulemaking process. This closing paragraph merely summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-31: Dow (Sam Gammage)

Comment B-31-1

The Dow Chemical Company ("Dow") appreciates the opportunity provided by the California Department of Resources Recycling and Recovery ("CalRecycle" or the "Department") to submit written comments on the August 22, 2025, Proposed Regulatory Text for **SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations**. SB 54 imposes minimum content requirements for single-use packaging and plastic food service ware, to be achieved through an extended producer responsibility (EPR) program.

Over the course of multiple iterations of this rulemaking, CalRecycle has prioritized implementation of a program that follows the intent and laws codified in SB 54 while also minimizing costs to consumers. We at Dow believe the May 16, 2025 informal text and August 22, 2025 proposed regulatory text have taken a pragmatic and appropriate approach to doing so.

As noted on the CalRecycle SB 54 webpage: "California's landmark packaging law is the most significant overhaul of California's plastics and packaging recycling policy in history. It goes further than any other state on cutting single-use plastic at the source and represents a giant step toward a more circular economy that is essential to combat climate change."1 We appreciate the work that CalRecycle has done to attempt to implement a program that is implementable by producers and businesses while also considering the potential costs for consumers.

> **Response to B-31-1**
>
> Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-31-2

ARTICLE 4: Responsible End Markets

Section 18980.4. Responsible End Market Criteria

In Article 4, Section 18980.4 - Responsible End Market Criteria, Dow appreciates further definition of responsible end markets within the larger circular supply chain. However, the *"point at which a product becomes a feedstock that meets the quality standards necessary to be used in lieu of virgin material"* may occur prior to the creation of a pellet. At Dow/Circulus mechanical recycling facilities, the pelletization does most accurately *become the point at which a product that may be used in lieu of a virgin material.* In the case of non-mechanical recycling, however, plastic feedstocks are converted into a form that can replace virgin fossil fuel feedstocks. Because of this, for non-mechanically recycled plastics, the end market point should be at the place where it

is utilized *in lieu of virgin fossil fuel feedstocks for the creation of new or reconstituted products.*

Response to B-31-2

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act. Section 18980.4.1(d)(4) of the proposed regulations already provides that, before a non-mechanical technology may be considered recycling under PRC section 42041(aa), any facility using the technology must provide the PRO with a description of the technology and how that technology is consistent with the definition of recycling under PRC section 42041(aa). Because PRC section 42041(aa)(3) provides that covered material must be sent to a responsible end market to be considered recycled, the facility using non-mechanical technology will be required to demonstrate how it is a responsible end market consistent with PRC section 42041(ad). Therefore, the proposed regulations already provide a route for facilities using non-mechanical technologies to be considered a responsible end market so long as they satisfy all the requirements of PRC section 42041(aa) and 42041(ad) and section 18980.4.1(d) of the proposed regulations, and no further change is necessary.

Comment B-31-3

Section 18980.4.1 End Market Identification

In Article 4, Section 18980.4.1 – End Market Identification. The goals of this law cannot be achieved without innovation, both regulatory and scientific. **At Dow, our ambition is to be the most innovative, customer centric, inclusive, and sustainable materials science company in the world.**, as demonstrated by our 127 year history of innovation.

Dow appreciates CalRecycle's thoughtful approach to include new recycling technologies within the framework of this regulation. The pathway allowed for under this section acknowledges that while there are recycling technologies operating at scale today, these landmark policies will also create new opportunities for innovation. As written, this allows for those innovations to be appropriately evaluated and implemented to support achieving the goals of this legislation. In addition, previous versions of the rule included "physical" recycling as a category of recycling that could be considered end markets without further review. Dow recommends that this rule restore and reflect that physical as well as mechanical be recognized as an end market technology. Dow is actively developing innovative plastic dissolution processes to recycle plastics that do not chemically alter or breach chemical bonds and should be accepted alongside traditional mechanical recycling.

Response to B-31-3

CalRecycle rejects this comment. To the extent this comment expresses support for the proposed regulations' approach to new recycling technologies, the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends including language explicitly allowing "physical" recycling along with mechanical recycling, see the response to comment B-11-8.

Comment B-31-4

Section 18980.4.3. End Market Development

Dow appreciates CalRecycle's inclusion of "alternative collection programs" as a category for end market development financial support. Currently, the most effective method of collection for flexible film packaging is through store drop-off sites. Significant investment and research are currently being employed to develop and enhance the collection systems for flexible films and enable a shift towards curbside collection systems and increased consumer participation. We appreciate that these draft regulations recognize both alternative and jurisdictional collection methods in determining recyclability. In addition, we recommend that CalRecycle, at a later time, review current recyclability regulations and laws to identify any challenges or discrepancies in how collection systems and material recovery are accounted for.

Response to B-31-4

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. As the comment recognizes, the recommended actions for CalRecycle to undertake relate to other recyclability regulations and laws and are therefore outside the scope of this rulemaking.

Comment B-31-5

ARTICLE 6: Requirements for the Producer Responsibility Organization

Section 18980.6.7 Eco-Modulated Fee Schedule

In Article 6, Section 18980.6.7 – Eco-Modulated Fee Schedule, (i) cross references Section 25249.8 of Health and Safety Code to the process for which materials are listed on the Proposition 65 list by The California Office of Environmental Health Hazard Assessment (OEHHA). Dow recommends striking this cross reference to Section 25249.8 of Health and Safety Code and that CalRecycle instead come up with its own process for assessing the malus fee as allowed for in SB 54. Proposition 65 was created with a specific intent to warn consumers of potential exposure to certain listed chemicals. Proposition 65 as adopted did not anticipate or allocate a fee simply for being listed on Prop 65 but only assesses a fee when found in violation of the Prop 65 warning requirements. The allocation of a "malus fee" for being a covered material and

listed on Prop 65 creates a scenario where The State of California may be going beyond their authority as allowed by Proposition 65.

Response to B-31-5

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment B-31-6

ARTICLE 8: Producer Responsibility Plan Requirements

Section 18980.8. Producer Responsibility Plan

In Article 8, Section 18980.8 – Producer Responsibility Plan, similarly to Section 18980.4.1 above designates a pathway and process for which innovative technologies may be approved by the PRO as end market technologies. We appreciate the approach that CalRecycle is taking to ensure that the intent of SB 54 is fulfilled by not just relying on current recycling technologies but to also allows for innovators to have a pathway to help create a more circular economy and meet the goals of SB 54.

Response to B-31-6

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment B-31-7

Background & Dow Initiatives

Dow is committed to shifting towards a more circular economy and has taken significant steps (below) towards this effort. We believe that well-designed EPR policies have a significant role to play in this transition. The State of California has an opportunity now to implement just such a policy and support the transition to a more circular economy.

Dow's strategy is to enable a shift to a circular economy for plastics by focusing on resource efficiency and integrating recycled content and renewable feedstocks into its production processes and designing for recyclability. Our goal is to ensure the value of plastic waste is fully utilized to create new, circular plastics that can be used again and again. We are investing in new product technology, value chain partnerships, business models and waste management infrastructure to discover and scale sustainable solutions that extend the useful life of materials and the resources that go into making them. We are using circular economy principles to support the waste hierarchy by rethinking traditional, linear "take-make-dispose" way of doing business to adopt new ways of working that maximize the value and use of our resources.

From the top down, Dow is committed to eliminating plastic pollution and has supported initiatives to do so:

- Dow CEO: My company is a major plastic producer. We must end plastic pollution.
- Dow: We Can't Miss this Opportunity to End Plastic Pollution

Dow has announced ambitious actions to capture the value of plastic waste and to accelerate its investments, partnerships, and projects to produce circular and low-carbon solutions and increasing the use of bio-based and plastic waste derived feedstocks (both from non-mechanical recycling and mechanical recycling).

In addition, we are convening and driving partnerships to collaborate toward solutions around the Globe. Dow is a participant in The Recycling Partnership's CalFFlex Initiative that aims to create pathways for film and flexible packaging compliance with California's SB 54 by improving recycling rates, validating end-market capacity, and generating demand for recycled products for film and flexibles. We are also a founding member of the Alliance to End Plastic Waste and a founding investor in Circulate Capital's $100 million Ocean Fund, and the Closed Loop Circular Plastics Fund in the US. Funding from these organizations has gone toward increasing collection and along with growing new end markets for hard to recycle plastics.

Please let us know if you have any questions.

Response to B-31-7

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-32: BASF (Jeanette Hanna)

Comment B-32-1

Thank you for the opportunity to comment on the August 2025 proposed regulation text for Senate Bill (SB) 54 ("the August 2025 proposed regulation"), as issued by the California Department of Resources Recycling and Recovery ("CalRecycle").
At BASF, we create chemistry for a sustainable future. BASF is a diverse global company that manufactures products and conducts research and development in industries ranging from automotive, electronics, paints and coatings, pharmaceuticals, personal care hygiene, and agricultural products, among a wide range of others. We employ 16,000 employees in North America, including over 250 employees in California located at 9 research and development and manufacturing sites across the state. BASF prides itself on developing innovative solutions to promote a circular and sustainable economy.

The biopolymers business at BASF makes certified compostable and certified soil biodegradable resins, which are raw materials for products sold across the world that help facilitate large-scale organic waste diversion. Collection and composting of organic

waste at scale is essential for California to meet its greenhouse gas (GHG) reduction goals and to offset impacts of climate change via the use of compost, which has been shown to increase water-holding capacity of soils, prevent erosion, and directly sequester carbon.

• **Comments on the new language. [General]**
We would like to acknowledge CalRecycle for conducting an informal rulemaking period earlier this year to address systemic issues from previous drafts in a comprehensive manner. Despite these engagements and improvements, we regret that many of our comments from the past rulemaking periods remain unaddressed, as key parts of the revised draft regulations are not consistent with either the intent or language in the statute with respect to critical issues for organics programs. As a result, in this document, we will revisit our comments previously outlined during the informal rulemaking process in May 2025.

The approach CalRecycle has taken with respect to compostable products and the composting marketplace remains unimplementable and illogical, arbitrarily punishing products containing certified compostable plastics in a manner that is outside the scope of the legislation, while giving a pass to other arbitrarily defined product groups.

We have significant concerns that key parts of the regulations are not based in science, common definitions, nor intent of the law. Furthermore, they undermine the importance of proven performance of certified compostable products by opening the door to toxins and persistent species in compost due to fully removing any scientific performance requirements for fiber-based products. In addition to this approach to fiber products, this regulation as currently drafted will effectively prevent any composter from accepting a certified compostable product containing plastic, even though it has proven performance and demonstrated safety for use in compost. It is not clear why CalRecycle is choosing to open the door to allow products that are untested and unproven to enter the environment, regardless of the level of harm they may cause, but seeks to prohibit participation by those that are fully tested and confirmed to meet statutory requirements.

We again wish to advise that certified compostable products are a critical part of large-scale organic waste diversion programs. Residents and businesses alike need these products to reduce contamination at composting facilities and cleanly and safely divert organics. Consumers need to be assured packaging is designed to ensure food safety and preserve shelf-life to reduce illness and/or food waste in the upstream value chain.

We are hopeful that CalRecycle will take a step back and come to recognize the importance of the role of certified compostable products in SB54 for creating a robust circular economy for organics in California in support of meeting California's climate goals. It is necessary to design a system that takes organics diversion into the future, based on evidence and learning from the past.

Response to B-32-1

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-2

• **CalRecycle must align the definition of "plastic or polymers" in [18980.1(a)(16)] with correct definitions, because when taken together with [18980.3.3(c)(3)] and [18980.3.3(c)(4)] the result will be a reduction in compost quality and harm to the environment.**

We have made this request through multiple rulemaking periods. It is unfathomable that CalRecycle would intentionally exceed its statutory authority to 1) change the meaning and intent of this language already in statute from AB1201, and 2) fully ignore the meaning of a well-defined and fully understood term.

o We have made a gentle request in previous rulemaking periods to address this, but this has not drawn the attention of CalRecycle, so we will reiterate our comment and urge the agency to modify the regulatory text.

The 61-Day Changes did include a partial definition of "polymer" which was then lost in the First 15-Day changes, and despite our comments, was not remedied in the Second 15-Day Changes, nor in the May 2025 proposed regulation. As a result of not following the proper scientific definition of "polymer", *CalRecycle is opening the door to allow potentially non-biodegradable and harmful materials into compost, and ultimately the open environment, without testing or other evaluation.*

o While we appreciate the attempt to explain this action as described in the Initial Statement of Reasons (ISOR), it is clear there as well, that CalRecycle has a significant error in understanding the meaning of the statute, which, as we explain, is unambiguous.

 The first explanation given by CalRecycle for ignoring the definition of "polymer" is that the exemption relates only to the rate of composting. This is not correct. It is an exemption from having to meet a standard specification which includes requirements for biodegradation, disintegration, ecotoxicity, and control of constituents. The "rate of composting" proposed by CalRecycle in the ISOR is addressed by disintegration only; all of the other criteria are critically important for protecting compost quality and the resulting soil health. The definition of the term "polymer" does not depend the content of ASTM D6400, although it should be noted that the term, "polymer" is explicitly defined that specification.

 The second argument, suggesting that the language in PRC §42356.1(d) is absurd because fiber itself is a polymer, is itself an absurd argument. The phrasing clearly indicates that the basis of the product is fiber and that other polymers are "incorporated". The subsequent argument is therefore fully unfounded. There are many polymers used in products; the only way such an exemption would be valid is if the product could be assured to meet all the requirements of the specification, including

ecotoxicity, biodegradability, and control of constituents, would be if the product was fiber-only.
 It is intended and understood to be an extremely narrow exemption; the specifications for compostable products are critical for ensuring soil health, and therefore, if there are any exemptions, they should be very narrow and only in cases where they are necessary. It would not make sense to exclude a wooden stir stick from being labeled compostable because it does not meet the disintegration requirements in the specification, when it is clear it would also meet the other criteria in the standard specification and composters are already accepting wood in their piles. It is an overreach of CalRecycle to not heed the clear meaning and intent in statute, and to propose the legislature did not intend to include language that safeguards compost quality.

o As we have previously stated, the term "polymer" is a commonly recognized term and can be found in the dictionary. To further explain the etymology of the term, "poly" means "many", and "mer" means "unit/part". A polymer is a molecule made of many repeating units. "Polymers" are not plastics (they are a much broader category of materials), so in the current regulatory definition, it must necessarily follow that CalRecycle has decided that the word "polymers" has no meaning at all, since the regulatory definition is limited to plastics.

It should therefore be noted that a polymer is not necessarily associated with plastics. We use polymers every day in our soaps, shampoos, conditioners, detergents and so on. Polymers used in these applications can be dispersed in water; they cannot be made into plastics. Polymers are also used in a wide range of lubricants, including the type we use every day in our vehicles. These polymers also cannot be made into plastics. Internet searches turn up a number of biological molecules that are polymers, such as DNA, or proteins, etc., none of which can be made into plastics.

While there are some special polymers that can be used to make plastics, it must be noted that this is a very specific subset of the entire class of "polymers".

Based on this overview, we wish to highlight that typically non-plastic , polymers are used in the process for making paper; the polymers used depend on the performance needed in the intended fiber-based product. It is for this reason that it *is very important that composters only accept certified compostable paper products, not just any and all paper products.* Otherwise, composters will be accepting chemicals of all kinds, including not only polymers but other additives that may not break down in a timely manner, and risk introduction of toxic materials into their compost product and ultimately the soil.

o While we have previously argued this is a scientific matter, we will here reframe this topic as simply a matter of recognizing the meaning of a common term in the English language. However, we have to point out that the common usage of this term is based in robust science, and taking any other position directly undermines decades of scientific work and consensus-based standards development. By inventing a definition

for "polymer" which is not correct, CalRecycle undermines and arbitrarily and invalidly modifies existing statute which requires products making a compostability claim to be tested.

o Not only is the definition incorrect, in this instance, CalRecycle has essentially stated that "polymers" is a word with no meaning since "plastics and polymers" shares a definition with "plastics". Even in the statutory text of SB 54, the definition of "plastic" does not equate all polymers to plastics, but rather, denotes that only a specific subset of polymers are examples of "plastics," proving that the intent of the legislation is not to wholly equate these two terms. See PRC §42041(t).

o The consequences of CalRecycle exceeding its authority to either attempt to change existing statute, or set a conflicting requirement under SB54 by not respecting the meaning of a word will create far-reaching and significant challenges in implementing this law.

As we have previously submitted, this incomplete and incorrect definition will result in a serious risk of harm to compost quality by turning a very narrow exemption in Section 18980.3.3(c)(4) to a very broad one, which is not in line with the intent or language of the existing statute in PRC §42356.1(d). Because paper and fiber products can contain a wide range of polymers, it is essential that paper and fiber products be certified compostable to ensure that they biodegrade and disintegrate appropriately in a compost pile, that they will not cause harm to plant growth, and that they will not contain components that are harmful to the environment. We therefore ask that the definition of "polymers" directly references the definition in ASTM D883.

polymer, *n—a substance consisting of molecules characterized by the repetition (neglecting ends, branch junctions and other minor irregularities) of one or more types of monomeric units. (2024)*
We ask that the definition of "polymer" in ASTM D883 is included in this regulation to reflect both the intent and the language in existing statute, Public Resources Code (PRC) §42356.1(d); *it is not within the scope of rulemaking for SB54 to change the definition of "polymers" to "plastics" and create new regulations for statutes resulting from AB1201 or create new regulations under SB54 that conflict with the legislative text.*

It should be noted that the ASTM D883 definition is referenced for the meaning of "polymer" in both ASTM D6400 and ASTM D6868, which are the foundational performance criteria for products labeled compostable in existing statute.

o The intent and language behind the exemption in PRC §42356.1(d) is clear because it was written specifically using the well-known meaning of the word "polymers". It therefore only applies to products like wooden stir sticks or cutlery which are physically carved from wood and do not have any additional polymers added to them. As previously explained, CalRecycle is likely already aware that products made only of wood do not always meet the disintegration requirements of ASTM D6400, like plastic

and paper-based products do, and therefore cannot be certified; it is for this reason that the exemption in PRC §42356.1(d) exists.

We must further point to the fact that the language in PRC §42356.1(d) is effectively the same as exemption language for compostable product labeling in other states, such as Minnesota and Washington . In these states, it is clear that this is a very narrow exemption for a few outlier products; unlike California, these states are not simply giving a free pass on performance and safety to all fiber-based products so long as they do not include plastics.

Considering the proposed language in section 18980.3.3(c)(4), *this incorrect definition for "plastic or polymers" results in allowing any product containing fiber to not be certified or tested, regardless of the non-biodegradable content, the rate of disintegration, or the amount of toxins it contains,* because the proposed definition of "plastic or polymers" in 18980.1(a)(16) only includes plastics. The disclaimer in section 18980.3.3(c)(6) is not sufficient to cover this oversight because it creates an impossible contradiction that would result allowing products that are not tested for performance and safety to be treated as such under SB54, but not in the marketplace. In addition to creating an inequity under SB54, it would increase consumer confusion, which could result
in these products being sent to a composting facility and potentially contaminating the compost.

o As a result of the economic and environmental harm this matter is likely to cause, we similarly object to the references to the definition in section 18980.1(a)(16) in section 18980.3.3, and in particular, as referenced in 18980.3.3(c)(4). Furthermore, it is clearly the intention of CalRecycle to ignore the word "polymer" in 18980.3.3(c)(4)(A)(ii), since it only references that the "substance does not constitute plastic".

o We ask CalRecycle how they justify acting outside the law by not using the proper definition of "polymers", considering the impact it will have on products making false claims and having a free pass to harm the environment. Furthermore, fiber-based products that have demonstrated no evidence of compostability, but are considered compostable due to these regulations, would be expected to receive favorable treatment under the PRO, while contaminating compost piles.

Response to B-32-2

CalRecycle has responded to this comment in its response to comment B-34-2, which is substantively identical to this one.

Comment B-32-3

• **CalRecycle must include the most important criteria for making a compostability claim prior to adding compostable materials to the covered material category (CMC) list. [18980.2.5(d)]**

In this section, CalRecycle is creating an uneven playing field by allowing a product that has not demonstrated that it is compostable to be considered compostable on the CMC list. This would make the CMC list discordant with existing statute that requires a product making a compostability claim to meet certain criteria, including meeting the ASTM standard specifications. And, according to that existing statute, PRC §42357, it would constitute an unlawful compostability claim for the product to be included on the CMC list as compostable.

CalRecycle has not yet named a certifier, as authorized under PRC §42357(g)(1)(A); therefore to be consistent with existing statute, a change in the proposed regulatory language must be made, as we have previously requested.

o Section 18980.2.5(d) states that compostability determinations for the CMC list are based on the "criteria set forth in subdivision (b) of section 18980.3.3. However, the criteria included in section 18980.3.3(b) *alone are not sufficient to determine whether a product can be safely composted* as long as no certifier has been named; such a product is therefore not suitable for inclusion on the CMC list.

o The criteria included in section 18980.3.3(b) are all secondary to the critical performance criteria for a compostable product, namely meeting biodegradation, disintegration, and toxicity requirements that are included in the requirements in section 18980.3.3(a).

We request the language in Section 18980.2.5(d) read:

(d) To update the compostability determinations of the CMC list pursuant to subdivision (e) of section 42061 of the Public Resources Code, the Department shall follow the requirements and apply the criteria set forth in ***subdivisions (a) and (b)*** ~~*subdivision (b)*~~ *of section 18980.3.3 of these regulations.*

Response to B-32-3

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-4

• **CalRecycle must remove the references to PRC §42357(g)(1)(B) which is not consistent with legislative intent. [18980.3.3(b)] [18980.3.3(c)(2)]**

California statute contains many criteria for making a valid compostability claim. It seems to be the intention of CalRecycle to continue to refer to only one criterion from this longer list in statute that permit a product to be eligible to be labeled compostable.

o The claim in the ISOR that this is the only logical way to "interpret section 42357(b)(1)(B) for the purposes of...section 42050(b) is unfounded, especially since 42357(b)(1)(B) does not exist. There is no justification given in the ISOR to counter that

the legislative text specifically references PRC Chapter 5.7 commencing with PRC §42355; in no way is PRC §42357(g)(1)(B) referenced or implied as a priority criteria in the legislation, and therefore should not be separately called out in the regulations, as the statue directly indicates it is included with all of the other criteria.

o It should be further noted that this particular criterion in PRC §42357(g)(1)(B) related to being allowed in organic compost has no technical merit. The requirement to be allowed in organic compost is arbitrary, and it would be appropriate for CalRecycle to instead reference statute that includes the entire list of criteria for being able to be labeled compostable.

o By choosing one particular criterion, CalRecycle has ignored the clear mandate in SB54 legislative text that the criteria for being eligible to be labeled compostable are established in PRC Chapter 5.7 commencing with PRC §42355.

Section 18980.3.3(b)(1) and (2) of the draft regulatory text creates new criteria which is not consistent with the legislative language in SB54; while some of these are elements are included in PRC Chapter 5.7, beginning with section 42355, it was clear the intent of SB54 was to include products that meet all the criteria in PRC Chapter 5.7 to be eligible to be labeled compostable, not to reproduce specific elements in statute in the regulations, ignoring others.

Section 18980.3.3(b)(1) states that materials must meet the requirements related to the NOP under PRC §42357(g)(1)(B), which is unnecessary, and inconsistent with the legislative language in SB54, which can be found in PRC §42050. The statute in PRC §42050 clearly states that products that meet the requirements in PRC Chapter 5.7 commencing with §42355 are to be included on the covered materials list, which would include the language in 18980.3.3(b). As a result, we find the current proposal that specifies PRC §42357(g)(1)(B) unnecessary and duplicative, and more importantly, it overlooks the other criteria which are established in PRC Chapter 5.7 commencing with §42355, which are relevant and important for materials.

o Section 18980.3.3(b)(2) specifies additional criteria for items, but that criteria is already referenced in 18980.3.3(a), and therefore, is duplicative and irregular to arbitrarily call out individual sections which are included in 18980.3.3(a), when this can simply be directly referenced as it was in the legislation.

It should also be noted that at this time, in section 18980.3.3, *there is no requirement for any products "eligible to be labeled compostable" to be tested or certified,* because CalRecycle has not approved a third-party certifier as indicated in section 18980.3.3(c)(3).

Secondarily, none of the compostable products subject to section 18980.3.3 must meet the testing requirements, because all the requirements listed in this section that are applicable are for the materials in the products rather than the finished products themselves. This is a second significant oversight that would be devastating for both

compost quality and the environment. CalRecycle must ensure finished products are required to meet the performance standards established in ASTM D6400 and ASTM D6868, as specifically directed in PRC 42357(a)(1); otherwise, there is no assurance that they will biodegrade, disintegrate, and be safe for compost. The language in section 18980.3.3(c)(6) is not sufficient to prevent the harm that will result from this regulation which is not consistent with existing statute. Those harms may include: increased confusion in the market from consumers; effective penalties for compostable product producers who do the right thing and certify their products; and ultimately, potential generation of low-quality compost that could damage the environment.

We request the language in Section 18980.3.3(b) read:

(b) The list published by the Department pursuant to subdivision (d) of section 42061 of the Public Resources Code shall identify each covered material category that ***meets the criteria in PRC section 42355-42357.5*** *~~[satisfies both of the following conditions: (1) There are materials within the covered material category that satisfy the requirements set forth in subparagraph (B) or paragraph (1) of subdivision (g) of section 42357 of the PRC. (2)]~~. The covered material category may encompass any ~~covered material that, if used by~~ individual items that* ***meet the requirements to be eligible to be labeled compostable as described in Section 18980.3.3(a)*** *~~[meets the requirements set forth in paragraphs (3) through (5) of subdivision (c), would be eligible to be labeled compostable~~].*

Response to B-32-4

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-5

• CalRecycle must define a responsible end market for compostables that will allow all covered products equal access. [18980.4(a)(4)(B)], [18980.4(a)4(C)]

We find it highly irregular that requirements for individual items are specified to have different end market requirements. It far exceeds CalRecycle's authority to arbitrarily create different criteria for products that *are processed together* in the *same process* for composters *who run a single process* to compost a broad diversity of products and manufacture the *same compost.*

At the May 27, 2025 workshop, CalRecycle disclosed that this decision was taken because compostable plastic items and paper items have different responsible end markets. This reveals a fundamental lack of understanding of both compostable products and composting by CalRecycle. We ask that if CalRecycle is going to assert such a position, that they must provide the evidence that indicates this is indeed the case and explain why it is the case, as it is absurd on its face.

In general, we support requirements for a composter to demonstrate that they can process the covered materials, but the requirements in 18980.4(a)(4)(B) are impossible for a composter to achieve. First, "biologically decompose" has no scientific definition, so there is no technical criteria a composter could meet to demonstrate they are in compliance with the regulations. Secondly, conversion to carbon dioxide can only be monitored in a closed system, which therefore must take place in a laboratory. We have previously submitted that if a composter makes compost of sufficient quality, then 1) it must meet the regulatory requirements for compost quality in California, and 2) that the composter manages their process such that they make stable and mature compost, in particular as described in ASTM D8618 or ASTM D8619, which define the requirements for stable and mature compost.

Because the language in 18980.4(a)(4)(B) makes it impossible for a composter to comply, it therefore blocks the end market for compostable plastic products, which is arbitrarily defined set of products, and it harms composters who wish to accept compostable plastics, since they would be required to run a process that has to meet not only arbitrary, but unknown, criteria for their finished product.

The ISOR states that certified compostable plastics cannot be a "recycled organic product", presumably because CalRecycle does not believe they are "organic solid wastes"; however, this is not correct. Certified compostable products are organic materials, as they are comprised of carbon, and like all organic materials collected for composting, they are capable of biodegrading by the action of naturally occurring microorganisms in a composting facility, at a rate consistent with other feedstocks and without harmful effects. While current regulations allow composters to have a de-minimis level of persistent plastic contamination, like their fiber-based counterparts, certified compostable materials will also continue to biodegrade over time, ultimately leaving no persistent microplastics.

The language in 18980.4(a)(4)(B) was formerly applied to all covered materials, but in this version of the regulations, a composter who accepts fiber-based products (and an unclear and arbitrary selection of other products) can be a responsible end market, since the resulting compost must only meet a few of the current state regulations for compost quality. While we appreciate this change, we advise that it is woefully insufficient unless it includes criteria for stable and mature compost. Otherwise, the output of the composting facility will not be stable and will only be appropriate for use in limited applications. Furthermore, this section must be properly applied to all covered materials, not an arbitrary subset.

In an analogous case for recycling, it would not be appropriate or proportional for CalRecycle to declare that a responsible end market for one plastic chemistry type has criteria impossible to achieve, and another type of plastic chemistry responsible end market would have a very low performance requirement. Or, perhaps more relevant, would be a case where CalRecycle decided that metal recycling had a low bar to be considered a responsible end market, but plastics recycling was impossible to achieve because there were no defined criteria that could be met to demonstrate compliance.

We ask CalRecycle to explain why it is fair and equitable that a composter who wishes to accept compostable plastics is effectively prohibited from doing so under these regulations, receiving no funding or support for processing them or developing education programs that help residents and businesses divert organic waste.

In addition to creating an unlevel marketspace, Section 18980.4(a)(4)(C) also creates a number of problems related to terminology. First, we have to point to the fact that CalRecycle has grievously erred in not properly including the definition of "polymer"; please see our earlier comments on that definition and the resulting impact as it relates to fiber products.

Secondly, this section also refers to materials made from "natural resources" which, is undefined, and that the references to "mineral origin" or "fossil fuels" are not correct in this context. If terms with no definition or terms with the wrong definition are used throughout the regulations, it is not clear how the resulting EPR program will function, as it will lack a clear and valid framework; market participants will not be clear how they can comply.

We further object to the fact that section 18980.4(a)(4)(C) appears to allow all compostable products except those with fossil content to be included, although, that is incompatible with both the language in this section as well as what is described in Section 18980.4(a)(4)(B). It is also inconsistent with the statutory text in SB54. Most importantly, though, it is well-known that there are certified compostable resins made with fossil sources and there is no reason to exclude a product with proven performance from participating in this EPR program due to an arbitrary and out-of-scope opinion on covered material feedstocks. Indeed, it must be noted that all certified composable products, regardless of the origin of the feedstock, are tested and certified to ensure they are both biodegradable and will not have harmful effects, and they will continue to biodegrade after the composting process is complete, should a very small piece remain at the end of the composting process.8,9,10 Nothing in SB 54 authorizes the inclusion of this discriminatory requirement; and if CalRecycle believes it has the legal authority to impose such a requirement, we specifically ask that they point it out.

Therefore, we ask CalRecycle to adopt the following language for Section 18980.4(a)(4)(B), and to remove newly added Section 18980.4(a)(4)(C) entirely:

~~*[For items partially or wholly constituting plastic, any covered material or derivative material intentionally included in the process used to generate a recycled organic product must fully biologically decompose. The entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).]*~~ ***Any covered material intentionally included in the***

process used to generate a recycle organic product may be processed in a manner consistent with the management of other feedstocks to produce a stable and mature marketable product as described in ASTM D8618 or ASTM D8619, and which complies with the standards found in sections 17868.2, 17868.3, and 17868.3.1 Of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17869.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations.

Response to B-32-5

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-6

• **CalRecycle must make corrections relating to compostables for eco-modulation fees with respect to setting the base fee [18980.6.7(e)] and the adjusted fees, or malus fees [18980.6.7(f)]**

We have asked for this problematic language to be addressed in previous versions because it is statutorily irrelevant, would cause harm to products making legitimate compostability claims, and would increase confusion in the consumer markets. The language being proposed allows arbitrary and unsubstantiated claims.

o In proposed section 18980.6.7(e)(1)(A), the regulatory text states that a PRO shall include a justification of the base rate for a given material, and it is stated that data pertaining to the "biodegradation or disintegration rate of compostable covered materials" is relevant. This provision needs to be removed, as there is no clear statutory directive to include this provision, and in practice, it would set the compostable products industry back over 20 years to a time when these types of invalid and arbitrary relational claims were regularly made.

Nowhere in statute does it indicate that CalRecycle should use "biodegredation or disintegration rate[s] of compostable covered materials" as a metric for setting a base rate for compostable products. We do not see a justification outlined in 42053(d)(1), nor in 42053(d)(2), and subsections (d)(3) and (d)(4) are unrelated. Therefore, we specifically ask CalRecycle to justify the inclusion of this provision in the regulatory text.

In practice, "biodegredation or disintegration rate[s]" are not appropriate metrics; rather, certified compostable products meet pass-fail criteria, and meeting these criteria confirms their performance. The very purpose of the certification is to prevent producers from making arbitrary and unsubstantiated claims about a "degree" of compostability that cannot be compared in a relevant fashion. As iterated above, this section (18980.6.7(e)) references PRC 42053(d) which addresses the ease and cost of composting, based on specifically outlined considerations in subsections (1)(A)(E)); it does not address biodegradation or disintegration rates. It is therefore outside the scope of the statute for CalRecycle to arbitrarily create a forum for making false claims,

as there is no way to scientifically demonstrate any relevant information on this topic for the purposes of setting rates.

Secondly, the sentence in 18980.6.7(e) regarding biodegradation and disintegration rates of compostable covered materials is used in parallel with recycling rates. These are two entirely separate criteria; recycling rates have to do with the volume of material being processed; biodegradation rates and disintegration rates have no bearing on volume or throughput. If CalRecycle is looking for parallel criteria in the composting industry, then we suggest considering the frequency of processing a given compostable item, even though that has no specific relevance for composters.

We wish to make clear that, in practice, ease and cost of composting a product come from a number of factors independent of the product, as noted in PRC 42053(d)(1). These factors include the origin of the organics feedstock stream (residential, industrial, commercial, institutional), the mix of the feedstocks (back of house or front of house), and the contamination that may come along from that location (based on composter ability to provide waste generator feedback and education programs). It should be left to the PRO to determine what criteria best fit the base rates once the needs assessment is complete. In particular, we raise this because education is the responsibility of the PRO. We ask CalRecycle to remove the reference to biodegradation and disintegration rates of compostable covered materials in 18980.6.7(e)(1)(A), as this is clearly out of scope of the statute.

Therefore, we propose the following language for Section 18980.6.7(e)(1)(A):

In setting the base fee rates, a PRO shall include a justification of each rate. The justification shall address each factor specified in subdivision (d) of section 42053 of the Public Resources Code. The justification for fees shall be informed, at a minimum, by the relevant data, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to ***frequency of use*** *[~~the biodegradation or disintegration rates~~] of compostable covered materials* ***determined by the needs assessment or other waste audit****.*

o For the same reason, we ask that “data pertaining to biodegradation or disintegration rates of compostable covered materials” be stricken from 18980.6.7(f)(1) related to setting malus fees. This language is not in SB54 nor in any other statute, and CalRecycle should refrain from introducing this provision in the regulations. In particular, in 18980.6.7(f), all the attributes designated for malus fees and credits are related to attributes of products that are not associated with end-of-life performance which is already addressed in the covered material categories. It relates to quantity of material, use, feedstocks, and other attributes of products that can affect environmental impact or help modify consumer behavior and result in higher composting rates (e.g., PRC 42053(e)(5)). We suggest that this section is designed for products that are causing contamination at composting facilities, so capturing the contamination rate is

most relevant for the assigning of malus fees for noncompostable products, as it is well-known this is one of the biggest challenges composters face at this time. Malus fees are intended to be the feedback loop for problematic products, and the end goal is to ensure that composters are successful in their endeavors. Composters do not have a sorting pre-process like recyclers do, so it is especially important that contamination is addressed at the source.

Therefore, we propose the following language for Section 18980.6.7(f)(1):

The justification shall be done by covered material category and shall address each factor specified in subdivision (e) of section 42053 of the Public Resources Code. The justification for malus fees and credits shall be informed, at a minimum, by the relevant date, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to ***rate of contamination in composting facilities*** *~~[biodegradation or disintegration rates of compostable covered materials]~~.*

Response to B-32-6

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-7

• **We request an edit to the definition of "renewable materials". [18980.6.7(j)(1)]**

We again request that CalRecycle use terms with scientific accuracy and in a responsible manner, instead of using undefined terms or terms with clear meaning in a context that does not make sense.

First of all, "renewable materials" should be inclusive of all renewable feedstocks, and it can be simplified to use common terms that are recognized globally, instead of introducing new and undefined terms, such as "natural resource".

It should be noted that "minerals" are not a feedstock for plastics; "minerals" are commonly understood to be inorganic materials, and they would not contain any carbon suitable for making a plastic, which is an organic, carbon-based product. Additionally, "fuels" are not feedstocks for plastics either; fossil resources such as oil and gas are feedstocks. We therefore also ask that the reference to "fuel" be removed. Furthermore, because of limited access to biobased feedstocks, we ask that the requirement to be "wholly derived" be removed. The renewable feedstock content can be readily reported, and therefore, credit should be prorated accordingly. Finally, the meaning of "without resulting in the net depletion of any of the resources" is not clear. Any feedstock used to create a product will be consumed in the manufacturing process. If the idea is to consider rapidly renewable sources, then this should be defined, using terms that are already well-known and understood, such as "renewable"

and “biogenic” as defined in ASTM D6866. It should be noted that these terms are also used in 18980.4(a)

We also want to make clear that the reference to “renewable materials” in PRC §42053(e)(7) is the *feedstock* of the plastic, not the final article which is stated to be *derived* from these feedstocks.

We propose and request adoption of the following:

“Renewable materials” for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code means ***feedstocks*** *[~~materials~~] that are made using* ***renewable or biogenic carbon that is not of fossil origin*** *[~~a natural resource that is not of mineral or fossil fuel origin, without resulting in the net depletion of the resource~~]. Examples of potentially renewable material include those derived from wood, mycelium, algae,* ***animals****, or plants such as cotton, corn, sugar cane, or wheat.*

Response to B-32-7

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-8

• **We request clarification on renewable carbon credits. [18980.6.7(j)(2)]**

It should also be made clear that credits should be applied according to the percentage of biogenic carbon in the feedstocks of the article. Instead of specifying the source of the feedstocks, which is not relevant to the final article, or could be variable, such as in the case where agricultural waste products are used, producers should present a certification that verifies the biogenic carbon content of the feedstocks.

We ask CalRecycle to adopt the following approach and specific regulatory language for Section 18980.6.7(j)(2):

When awarding a credit to participant producers, the PRO shall ***apply credits according to the percentage of measured or attributed biogenic carbon in the feedstocks, when that percentage is confirmed by a third-party certification*** *[~~in its justification specify the feedstocks used to produce the covered material~~].*

This language will help support a transition to renewable feedstocks by allowing for innovation and create rewards based on merit, not arbitrary claims.

Response to B-32-8

For responses to comments in this submission (comment codes beginning "B-32"), see CalRecycle's responses to comments B-34-1 through B-34-9, which are identical to those in this submission.

Comment B-32-9

• **CalRecycle should update the certification section allowing for sufficient time to come into compliance. [18981(b)]**

We would again request that the certification body is given a reasonable amount of time to come into compliance with the ISO17065 accreditation, and that the associated products have an additional three years to come into compliance, as long as the certification body is already accredited. This is consistent with current three-year product certification cycles, and it will allow producers to comply without causing massive disruption in testing labs for unnecessary repeated testing and recertification. We support the comments submitted by the Biodegradable Products Institute on this technical matter.

We thank you for the opportunity to comment and appreciate your consideration of the changes we have put forth above. We would welcome the opportunity to discuss these topics and others related to the implementation process for SB54.

Response to B-32-9

Comment rejected. No time is needed to allow any entity to "come into compliance with the ISO17065 accreditation" because the requirement for certification does not apply until one year after CalRecycle approves an ISO/IEC 17065-accredited entity in the first place. Moreover, PRC section 42357(g)(1)(A) does not authorize CalRecycle to modify that timeline.

B-33: Freepoint Eco-Systems Holdings LLC (Sid Fowler)

Comment B-33-1

Freepoint Eco-Systems Holdings LLC ("Freepoint") appreciates the opportunity to provide comments on the proposed Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations (the "Proposed Rule") published by the California Department of Resources Recycling and Recovery ("CalRecycle") on August 22, 2025. Freepoint develops, constructs, owns and operates facilities in the United States and Europe that use pyrolysis to recycle plastic waste. Freepoint is currently in the planning stages of developing a plastic waste processing and densification facility in Yermo, California, that will produce waste plastic pellets to be used in our pyrolysis process to manufacture pyrolysis oil that can be used in lieu of virgin material for the creation of new products.

Established in 2020, Freepoint's mission is to address the global plastic waste problem by developing innovative solutions to achieve a more sustainable future. Freepoint is developing a series of plastic waste processing and densification facilities that will create recycled plastic pellets for our pyrolysis facilities. In some instances, the pellet production and pyrolysis facilities will be co-located at the same facility, and in other instances, they will be located at separate facilities. In all cases, Freepoint will convert

waste plastic into feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new and reconstituted products. Correspondingly, Freepoint supports the objectives of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "Act") and California's goal of minimizing waste. Reaching a waste-free future will require the development of innovative and environmentally beneficial technologies in order to process a broader set of plastic waste types in a technologically feasible and economically productive manner.

Freepoint commends CalRecycle for the important changes made to the Proposed Rule from the proposed regulations issued in 2024. As now drafted, the Proposed Rule achieves significantly better consistency with the Act's statutory language and technology-neutral, outcomes-based framework. While Freepoint generally supports the Proposed Rule, it respectfully submits the following comments regarding the Act's legal framework and the Proposed Rule's implementation. First, Freepoint approves of the Proposed Rule's language regarding new recycling technologies, as this language appropriately complies with the Act's framework. Second, that under the Act, Freepoint's pelletization and pyrolysis facilities should qualify as Responsible End Markets. Third, Freepoint objects to the Proposed Rule's establishment of "Intermediate Supply Chain Entities," as it is inconsistent with the Act. Fourth, that the Act does not mandate the use of any particular accounting method to trace recycled content and calculate recycling yield. Specifically, the Act does not prohibit the use of mass balance accounting, so long as such accounting meets the other accounting requirements set forth in the Proposed Rule. And fifth, that while the Rule does not prohibit mass balance accounting, such a prohibition would violate the Dormant Commerce Clause in the U.S. Constitution.

Response to B-33-1

Comment rejected. No response to this introductory portion of the commenter's submission is necessary because the issues raised in it are discussed in greater detail in the later portions. To the extent those later portions require responses, CalRecycle has provided them

Comment B-33-2

I. Freepoint Approves of the Regulatory Requirements for New Recycling Technologies

Section 18980.4.1(d) of the Proposed Rule establishes criteria governing the inclusion of new recycling technologies in a Producer Responsibility Plan. Freepoint supports this section because it appropriately aligns with the Act and carries out the Act's instruction that CalRecycle provide pathways for new recycling technologies while minimizing the generation of hazardous waste. These provisions complement California's mechanical recycling infrastructure by fostering new approaches that expand and improve material recovery.

Consistent with the Act, the Proposed Rule establishes criteria to exclude only those recycling technologies that produce "significant amounts of hazardous waste."1 The Department appropriately exercised its discretion to interpret that term to mean waste

that "presents a substantial risk of harm to public health, or of contamination of the environment," while recognizing that hazardous waste managed in compliance with applicable permits and state and federal law, including the Resource Conservation and Recovery Act, does not present a substantial risk of harm to public health, or of contamination of the environment, and thus does not constitute "significant amounts."2 This interpretation faithfully implements the statutory directive to encourage technologies that minimize the generation of hazardous waste, not to prohibit any generation altogether.

The Proposed Rule similarly carries out the Act's directives by encouraging development of technologies that reduce greenhouse gas emissions, while reducing environmental and environmental justice impacts, and risks to public health. For example, the Proposed Rule requires non-mechanical recycling technologies to conform to ISO 59014:20243 and requires Producer Responsibility Plans to include assessments of potential impacts on disadvantaged and rural communities.4 The Proposed Rule also requires the Producer Responsibility Organization to report the weight of both the total material processed and the hazardous waste produced, enabling CalRecycle to evaluate the technology's performance relative to its waste generation.5 Provisions such as these ensure that innovative technologies will be deployed responsibly while advancing the Act's environmental justice and climate goals.

Response to B-33-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-33-3

II. Appropriate Treatment of Responsible End Markets under the Proposed Rule

The Act defines "responsible end market" as "a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety."6 The Act defines "recycling" as "the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace."7

Both the Act and the Proposed Rule establish a broad, technology-neutral standard for Responsible End Markets that allows recycling to encompass technologies that recycle plastic into other materials for reuse. Under the Act, Responsible End Markets encompass a range of entities that use various plastic recycling and recovery processes to produce an assorted set of products. The Act thus supports the development of the diverse approaches needed to achieve the plastic recycling rates required by the Act and California's overall waste reduction goals.

Freepoint believes that the Proposed Rule's definition of the term "responsible end market" is consistent with the Act's definition. While the original language of the Proposed Rule identifying Responsible End Markets for waste plastic was unnecessarily narrow and potentially limiting to only mechanical recycling technologies, Freepoint appreciates that the Proposed Rule now provides that a Responsible End Market for plastic is an entity that "first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products," and includes but is not limited to "entities that create pellet."8 Freepoint's planned facility in Yermo California will create plastic pellets that can be used in lieu of virgin material for the creation of new plastic and other products, thereby qualifying it as a Responsible End Market under the Proposed Rule.

Alternatively, Freepoint's planned pyrolysis facilities that will produce a hydrocarbon feedstock stream from the plastic pellets produced at the Yermo facility that meets "the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products," should also qualify as Responsible End Markets for waste plastic. Through the application of heat in the absence of oxygen, pyrolysis converts post-use plastic into a recovered product that can be reintroduced into the plastics supply chain as a substitute for virgin hydrocarbons. This process constitutes the collection, treatment, and reconstitution of materials that would otherwise be disposed of and returns them to productive use as recovered material, falling squarely within the Act's definition of "recycling."9

Moreover, Freepoint's process does not involve combustion, incineration, energy recovery, or fuel production, and thus avoids the exclusions set forth in the Act.10 Rather, the process "is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety" because Freepoint's facilities reduce diversion to landfills and incinerators, significantly lower overall lifecycle emissions compared to virgin fossil production,11 and expand the range of plastic categories that can be recycled. Nothing in the Act forecloses the recognition of such facilities as Responsible End Markets, and a reading that excludes them would contradict the Act's broad, technology-neutral framework.

The Proposed Rule appropriately implements the Act's technology-neutral approach by establishing criteria that focus on outcomes and environmental protections, rather than prescribing specific recycling technologies. Section 18980.4 sets forth a comprehensive list of requirements that a facility must meet to qualify as a Responsible End Market, including applicable environmental permits, proper handling and disposal of incompatible materials, transparency through chain-of-custody documentation, cooperation with third-party audits, and achievement of average recycling yields as specified in the producer responsibility plan. Freepoint's pyrolysis facilities satisfy each of these requirements.12

Response to B-33-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-33-4

III. The Proposed Rule's Regulations Governing Intermediate Supply Chain Entities are not Supported by Statutory Authority

The Proposed Rule establishes regulations governing "intermediate supply chain entities" and distinguishes such entities from Responsible End Markets. The term "intermediate supply chain" appears nowhere in the Act, nor does the concept of regulating an entity that is not a plastic producer, retailer, wholesaler, recycler, online marketplace, or a producer responsibility organization. The Act does not grant CalRecycle broad authority to regulate any entity that it chooses in furtherance of the goals of the Act. Rather, the Act is highly prescriptive in the regulation of specific entities to meet the recycling requirements of the Act. Moreover, California agencies may not promulgate any regulation that is not only consistent with the enabling statute, but also reasonably necessary to carry out that statute's purpose.13

Nonetheless, the Proposed Rule proposes to regulate any entity that collects "materials after they have been collected."14 In doing so, the Proposed Rule excludes entities that transfer materials offsite for further processing from the definition of "responsible end market," which is in direct contravention of the Act's definition of a Responsible End Market. The Act defines "responsible end market" as "a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety."15 The Act's definition neither precludes facilities that produce recycled materials that may require further processing from qualifying as a Responsible End Market nor does it provide CalRecycle with authority to promulgate regulations narrowing the scope of the definition of Responsible End Markets. Instead, the Act simply states that CalRecycle "may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety." CalRecycle has appropriately proposed regulations identifying Responsible End Markets for particular materials, but it may not categorically exclude broad swaths of otherwise qualified entities from the definition simply because the material produced by those entities requires further processing. Such exclusion does not in any way "benefit the environment" or "minimize risk to public health and worker health and safety."

The Proposed Rule's definition of "intermediate supply chain entity" is inconsistent with its identification of Responsible End Markets. Under the Proposed Rule's definition, a Responsible End Market cannot also be an intermediate supply chain entity. The Proposed Rule defines an intermediate supply chain entity as an entity that transfers materials offsite for further processing, but identifies recycled plastic feedstock producers (e.g., pellet producers) as Responsible End Markets. Recycled plastic

feedstock producers inherently transfer their pellets offsite for further processing, thereby creating an internally inconsistent series of definitions.

Therefore, Freepoint encourages CalRecycle to remove the concept of intermediate supply chain entities from the Proposed Rule. Seeking to regulate intermediate entities does not further the goals of the Act as the plastic producers and Responsible End Markets are still inherently responsible for compliance with the Act and are fully capable of such compliance if the Proposed Rule is properly drafted. Keeping this concept in the Proposed Rule only leaves it susceptible to judicial challenge without delivering any corresponding benefit to the environment or furthering the goals of the Act.

Response to B-33-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), 42051.1, and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. As recognized by the commenter, PRC section 42041(ad) defines a responsible end market as a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. Moreover, PRC section 42041(aa)(3) provides that, to be considered recycled, covered material must be sent to a responsible end market. These statutory provisions and others, along with the overall statutory framework, require that only one responsible end market may receive any single covered material item. This is necessary to satisfy the requirements of the Act, including, among others, the recycling rate requirements of PRC sections 42050(c) and 42057(i). If multiple responsible end markets could be said to have received and processed a single covered material item, there would be significant uncertainty and confusion as to when that covered material item could be considered to have been recycled in accordance with PRC section 42041(aa)(3). The proposed regulations' designation of intermediate supply chain entities, including in section 18980.4(b) of the proposed regulations, is necessary to offer clear guidance and to recognize that a covered material item may be accepted, processed, and transferred for further processing by multiple entities before such covered material item may be considered recycled under the Act. Contrary to the assertions made in this comment, nothing in the Act precludes this recognition of intermediate supply chain entities and the designation of such entities is necessary to the implementation of the Act. Therefore, no change is necessary.

Comment B-33-5

IV. Accounting Flexibility is Critical and the Act Allows for the Use of Mass Balance Accounting

The Act establishes a performance-based framework that requires producers to meet recycling rates, but it does not dictate the use of any specific methodology for calculating those rates. This deliberate statutory silence reflects the Legislature's intent

to provide regulated entities the flexibility to develop appropriate methodologies suited to different technologies and materials. Rigid, one-size-fits-all accounting mandates would exceed the bounds of the Act and undermine its intent to promote the development of innovative waste management solutions. Maintaining a flexible, technology-neutral framework for calculating recycling rates, including allowing the use of mass balance accounting, is thus essential to the Act's success.

The Proposed Rule appropriately reflects this statutory flexibility by authorizing the Producer Responsibility Organization to use appropriate methodologies for calculating recycling rates where it can be demonstrated to be the "most accurate way to calculate the recycling rate."16 This provision is critical to ensuring that the regulatory framework can accommodate both established and emerging recycling technologies, including those that do not lend themselves to traditional physical tracking of material inputs and outputs. In many emerging recycling systems, post-use materials are converted into a feedstock that is chemically identical to virgin materials and may necessarily be commingled in large-scale production systems. In these contexts, molecular traceability becomes infeasible. Therefore, accounting approaches, such as mass balance, may be needed to accurately trace material recovery rates.17 In fact, this has been recognized by the Producer Responsibility Organization in other jurisdictions, such as Oregon and Colorado.18 Preserving methodological flexibility, subject to appropriate documentation and verification, is necessary to maintaining a level playing field for all recycling technologies.

To ensure the continued effectiveness and adaptability of the regulatory framework, CalRecycle should ensure that the Proposed Rule remains intentionally neutral as to methodology and allows the Producer Responsibility Organization or independent producers to use a range of approaches to calculating recycling rates. By preserving flexibility in how recycling outcomes are measured, CalRecycle will help ensure that the Act remains durable, innovation-enabling, and capable of delivering the environmental benefits it was designed to achieve.

Response to B-33-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-33-6

V. Prohibiting Mass Balance Would Violate the Dormant Commerce Clause

The dormant Commerce Clause prohibits state laws that discriminate against or unduly burden interstate commerce, even when enacted for legitimate local purposes.19 Prohibiting or limiting the use of certain accounting methodologies, such as mass balance, would create an undue burden and raise serious concerns under the dormant Commerce Clause. Recycling and plastic production facilities operate as part of integrated supply chains that span multiple states and countries. In these systems, recycled feedstocks are chemically indistinguishable from virgin materials and, due to scale, must be commingled in plastic production facilities located outside California.

Prohibiting or limiting the use of accounting methods that are widely accepted in other jurisdictions to document the recycled content of these products would effectively discriminate against interstate commerce by placing a substantial burden on producers that source or process materials across state lines.20

The dormant Commerce Clause forbids states from adopting regulations that impose an undue burden on interstate commerce in pursuit of local policy goals. A prohibition on accounting methodologies that are necessary for multi-state recycling systems would effectively wall off California's program from national and global supply chains. This would force producers and recyclers, whose businesses depend on operating efficiently at a national scale, to implement costly and duplicative systems for sourcing, manufacturing, tracking, and distribution solely to serve California, or to forego use of recycled-content materials produced with these accounting methods across their entire national supply chain in order to prevent those materials from entering California. Either outcome would impermissibly burden interstate commerce. Accordingly, CalRecycle should ensure that the Proposed Rule itself, as well as the Proposed Rule's implementation, remains methodologically neutral and does not restrict the use of legitimate, auditable accounting systems used in interstate commerce.

Response to B-33-6

Comment rejected. The comment encourages CalRecycle to preserve the proposed regulations' allegedly "methodologically neutral" nature (i.e., to keep the proposed regulations as written), without suggesting changes or raising objections related to the rulemaking process.

Comment B-33-7

VI. Conclusion

Freepoint appreciates the opportunity to comment on CalRecycle's August 22, 2025 Proposed Rule implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act. Freepoint strongly supports the Act's goals of reducing plastic waste and fostering innovation in recycling technologies. However, to ensure the Proposed Rule remains consistent with the Act's statutory framework and legally durable, Freepoint emphasizes that (1) pelletization and pyrolysis facilities can meet the Act's criteria as Responsible End Markets, and respectfully urges CalRecycle to: (2) remove the concept of Intermediate Supply Chain Entities, which is unsupported by the statute; (3) preserve accounting flexibility, including the use of mass balance methodologies, consistent with legislative intent; and (4) avoid restrictions that would risk violating the Dormant Commerce Clause.

By maintaining a technology-neutral and outcomes-driven approach, CalRecycle can create a regulatory framework that advances California's leadership in addressing plastic waste, while enabling innovative recycling solutions to succeed. Freepoint looks forward to continuing to engage with CalRecycle in achieving these important objectives.

Response to B-33-7

Comment rejected. No response to this "conclusion" section of the commenter's submission is necessary because it only summarizes the issues discussed in greater detailer in earlier portions of the submission. To the extent responses to those earlier portions are required, CalRecycle has provided them. See comments B-33-1 through B-33-6.

B-34: BASF (Jeanette Hanna)

Comment B-34-1

Thank you for the opportunity to comment on the August 2025 proposed regulation text for Senate Bill (SB) 54 ("the August 2025 proposed regulation"), as issued by the California Department of Resources Recycling and Recovery ("CalRecycle").
At BASF, we create chemistry for a sustainable future. BASF is a diverse global company that manufactures products and conducts research and development in industries ranging from automotive, electronics, paints and coatings, pharmaceuticals, personal care hygiene, and agricultural products, among a wide range of others. We employ 16,000 employees in North America, including over 250 employees in California located at 9 research and development and manufacturing sites across the state. BASF prides itself on developing innovative solutions to promote a circular and sustainable economy.

The biopolymers business at BASF makes certified compostable and certified soil biodegradable resins, which are raw materials for products sold across the world that help facilitate large-scale organic waste diversion. Collection and composting of organic waste at scale is essential for California to meet its greenhouse gas (GHG) reduction goals and to offset impacts of climate change via the use of compost, which has been shown to increase water-holding capacity of soils, prevent erosion, and directly sequester carbon.

• **Comments on the new language. [General]**

We would like to acknowledge CalRecycle for conducting an informal rulemaking period earlier this year to address systemic issues from previous drafts in a comprehensive manner. Despite these engagements and improvements, we regret that many of our comments from the past rulemaking periods remain unaddressed, as key parts of the revised draft regulations are not consistent with either the intent or language in the statute with respect to critical issues for organics programs. As a result, in this document, we will revisit our comments previously outlined during the informal rulemaking process in May 2025.

The approach CalRecycle has taken with respect to compostable products and the composting marketplace remains unimplementable and illogical, arbitrarily punishing products containing certified compostable plastics in a manner that is outside the scope of the legislation, while giving a pass to other arbitrarily defined product groups.

We have significant concerns that key parts of the regulations are not based in science, common definitions, nor intent of the law. Furthermore, they undermine the importance of proven performance of certified compostable products by opening the door to toxins and persistent species in compost due to fully removing any scientific performance requirements for fiber-based products. In addition to this approach to fiber products, this regulation as currently drafted will effectively prevent any composter from accepting a certified compostable product containing plastic, even though it has proven performance and demonstrated safety for use in compost. It is not clear why CalRecycle is choosing to open the door to allow products that are untested and unproven to enter the environment, regardless of the level of harm they may cause, but seeks to prohibit participation by those that are fully tested and confirmed to meet statutory requirements.

We again wish to advise that certified compostable products are a critical part of large-scale organic waste diversion programs. Residents and businesses alike need these products to reduce contamination at composting facilities and cleanly and safely divert organics. Consumers need to be assured packaging is designed to ensure food safety and preserve shelf-life to reduce illness and/or food waste in the upstream value chain.

We are hopeful that CalRecycle will take a step back and come to recognize the importance of the role of certified compostable products in SB54 for creating a robust circular economy for organics in California in support of meeting California's climate goals. It is necessary to design a system that takes organics diversion into the future, based on evidence and learning from the past.

Response to B-34-1

Comment rejected. This portion of the commenter's submission generally summarizes the issues discussed in greater detail in later portions; it does not set forth the commenter's recommended changes to the proposed regulations. To the extent those later portions, in combination with this portion, require responses because they recommend changes to the proposed regulations or raise objections related to the rulemaking process, CalRecycle has responded accordingly.

Comment B-34-2

• **CalRecycle must align the definition of "plastic or polymers" in [18980.1(a)(16)] with correct definitions, because when taken together with [18980.3.3(c)(3)] and [18980.3.3(c)(4)] the result will be a reduction in compost quality and harm to the environment.**

We have made this request through multiple rulemaking periods. It is unfathomable that CalRecycle would intentionally exceed its statutory authority to 1) change the meaning and intent of this language already in statute from AB1201, and 2) fully ignore the meaning of a well-defined and fully understood term.

o We have made a gentle request in previous rulemaking periods to address this, but this has not drawn the attention of CalRecycle, so we will reiterate our comment and urge the agency to modify the regulatory text.

The 61-Day Changes did include a partial definition of "polymer" which was then lost in the First 15-Day changes, and despite our comments, was not remedied in the Second 15-Day Changes, nor in the May 2025 proposed regulation. As a result of not following the proper scientific definition of "polymer", *CalRecycle is opening the door to allow potentially non-biodegradable and harmful materials into compost, and ultimately the open environment, without testing or other evaluation.*

o While we appreciate the attempt to explain this action as described in the Initial Statement of Reasons (ISOR), it is clear there as well, that CalRecycle has a significant error in understanding the meaning of the statute, which, as we explain, is unambiguous.
 The first explanation given by CalRecycle for ignoring the definition of "polymer" is that the exemption relates only to the rate of composting. This is not correct. It is an exemption from having to meet a standard specification which includes requirements for biodegradation, disintegration, ecotoxicity, and control of constituents. The "rate of composting" proposed by CalRecycle in the ISOR is addressed by disintegration only; all of the other criteria are critically important for protecting compost quality and the resulting soil health. The definition of the term "polymer" does not depend the content of ASTM D6400, although it should be noted that the term, "polymer" is explicitly defined that specification.
 The second argument, suggesting that the language in PRC §42356.1(d) is absurd because fiber itself is a polymer, is itself an absurd argument. The phrasing clearly indicates that the basis of the product is fiber and that other polymers are "incorporated". The subsequent argument is therefore fully unfounded. There are many polymers used in products; the only way such an exemption would be valid is if the product could be assured to meet all the requirements of the specification, including ecotoxicity, biodegradability, and control of constituents, would be if the product was fiber-only.
 It is intended and understood to be an extremely narrow exemption; the specifications for compostable products are critical for ensuring soil health, and therefore, if there are any exemptions, they should be very narrow and only in cases where they are necessary. It would not make sense to exclude a wooden stir stick from being labeled compostable because it does not meet the disintegration requirements in the specification, when it is clear it would also meet the other criteria in the standard specification and composters are already accepting wood in their piles. It is an overreach of CalRecycle to not heed the clear meaning and intent in statute, and to propose the legislature did not intend to include language that safeguards compost quality.

o As we have previously stated, the term "polymer" is a commonly recognized term and can be found in the dictionary. To further explain the etymology of the term, "poly" means "many", and "mer" means "unit/part". A polymer is a molecule made of many

repeating units. "Polymers" are not plastics (they are a much broader category of materials), so in the current regulatory definition, it must necessarily follow that CalRecycle has decided that the word "polymers" has no meaning at all, since the regulatory definition is limited to plastics.

It should therefore be noted that a polymer is not necessarily associated with plastics. We use polymers every day in our soaps, shampoos, conditioners, detergents and so on. Polymers used in these applications can be dispersed in water; they cannot be made into plastics. Polymers are also used in a wide range of lubricants, including the type we use every day in our vehicles. These polymers also cannot be made into plastics. Internet searches turn up a number of biological molecules that are polymers, such as DNA, or proteins, etc., none of which can be made into plastics.

While there are some special polymers that can be used to make plastics, it must be noted that this is a very specific subset of the entire class of "polymers".

Based on this overview, we wish to highlight that typically non-plastic , polymers are used in the process for making paper; the polymers used depend on the performance needed in the intended fiber-based product. It is for this reason that *it is very important that composters only accept certified compostable paper products, not just any and all paper products.* Otherwise, composters will be accepting chemicals of all kinds, including not only polymers but other additives that may not break down in a timely manner, and risk introduction of toxic materials into their compost product and ultimately the soil.

o While we have previously argued this is a scientific matter, we will here reframe this topic as simply a matter of recognizing the meaning of a common term in the English language. However, we have to point out that the common usage of this term is based in robust science, and taking any other position directly undermines decades of scientific work and consensus-based standards development. By inventing a definition for "polymer" which is not correct, CalRecycle undermines and arbitrarily and invalidly modifies existing statute which requires products making a compostability claim to be tested.

o Not only is the definition incorrect, in this instance, CalRecycle has essentially stated that "polymers" is a word with no meaning since "plastics and polymers" shares a definition with "plastics". Even in the statutory text of SB 54, the definition of "plastic" does not equate all polymers to plastics, but rather, denotes that only a specific subset of polymers are examples of "plastics," proving that the intent of the legislation is not to wholly equate these two terms. See PRC §42041(t).

o The consequences of CalRecycle exceeding its authority to either attempt to change existing statute, or set a conflicting requirement under SB54 by not respecting the meaning of a word will create far-reaching and significant challenges in implementing this law.

As we have previously submitted, this incomplete and incorrect definition will result in a serious risk of harm to compost quality by turning a very narrow exemption in Section 18980.3.3(c)(4) to a very broad one, which is not in line with the intent or language of the existing statute in PRC §42356.1(d). Because paper and fiber products can contain a wide range of polymers, it is essential that paper and fiber products be certified compostable to ensure that they biodegrade and disintegrate appropriately in a compost pile, that they will not cause harm to plant growth, and that they will not contain components that are harmful to the environment. We therefore ask that the definition of "polymers" directly references the definition in ASTM D883.

***polymer**, n—a substance consisting of molecules characterized by the repetition (neglecting ends, branch junctions and other minor irregularities) of one or more types of monomeric units. (2024)*
We ask that the definition of "polymer" in ASTM D883 is included in this regulation to reflect both the intent and the language in existing statute, Public Resources Code (PRC) §42356.1(d); *it is not within the scope of rulemaking for SB54 to change the definition of "polymers" to "plastics" and create new regulations for statutes resulting from AB1201 or create new regulations under SB54 that conflict with the legislative text.*

It should be noted that the ASTM D883 definition is referenced for the meaning of "polymer" in both ASTM D6400 and ASTM D6868, which are the foundational performance criteria for products labeled compostable in existing statute.

o The intent and language behind the exemption in PRC §42356.1(d) is clear because it was written specifically using the well-known meaning of the word "polymers". It therefore only applies to products like wooden stir sticks or cutlery which are physically carved from wood and do not have any additional polymers added to them. As previously explained, CalRecycle is likely already aware that products made only of wood do not always meet the disintegration requirements of ASTM D6400, like plastic and paper-based products do, and therefore cannot be certified; it is for this reason that the exemption in PRC §42356.1(d) exists.

We must further point to the fact that the language in PRC §42356.1(d) is effectively the same as exemption language for compostable product labeling in other states, such as Minnesota and Washington . In these states, it is clear that this is a very narrow exemption for a few outlier products; unlike California, these states are not simply giving a free pass on performance and safety to all fiber-based products so long as they do not include plastics.

Considering the proposed language in section 18980.3.3(c)(4), *this incorrect definition for "plastic or polymers" results in allowing any product containing fiber to not be certified or tested, regardless of the non-biodegradable content, the rate of disintegration, or the amount of toxins it contains*, because the proposed definition of "plastic or polymers" in 18980.1(a)(16) only includes plastics. The disclaimer in section 18980.3.3(c)(6) is not sufficient to cover this oversight because it creates an impossible contradiction that would result allowing products that are not tested for performance and

safety to be treated as such under SB54, but not in the marketplace. In addition to creating an inequity under SB54, it would increase consumer confusion, which could result
in these products being sent to a composting facility and potentially contaminating the compost.

o As a result of the economic and environmental harm this matter is likely to cause, we similarly object to the references to the definition in section 18980.1(a)(16) in section 18980.3.3, and in particular, as referenced in 18980.3.3(c)(4). Furthermore, it is clearly the intention of CalRecycle to ignore the word "polymer" in 18980.3.3(c)(4)(A)(ii), since it only references that the "substance does not constitute plastic".

o We ask CalRecycle how they justify acting outside the law by not using the proper definition of "polymers", considering the impact it will have on products making false claims and having a free pass to harm the environment. Furthermore, fiber-based products that have demonstrated no evidence of compostability, but are considered compostable due to these regulations, would be expected to receive favorable treatment under the PRO, while contaminating compost piles.

Response to B-34-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2. While this comment does include the proposed definition of "polymer," that response still applies. Also, the commenter provides no explanation of what it calls the "language behind the exemption" and the claim that it was "written specifically using the well-known meaning of the word 'polymers.'" The commenter points to no legislative history to explain those contentions. Lastly, the commenter's concerns reflect several misunderstandings of statute. The concern over non-plastic polymers incorporated into wood (or other non-plastic fiber) food service ware items is misplaced because those items are, by definition, not covered material. And, with respect to any covered material, if items contain any synthetic polymers, with very limited exception, they would fail to satisfy the requirement in public Resources Code section 42357(g)(1)(B) (requiring materials to be allowable inputs under the National Organic Program).

Comment B-34-3

• **CalRecycle must include the most important criteria for making a compostability claim prior to adding compostable materials to the covered material category (CMC) list. [18980.2.5(d)]**

In this section, CalRecycle is creating an uneven playing field by allowing a product that has not demonstrated that it is compostable to be considered compostable on the CMC list. This would make the CMC list discordant with existing statute that requires a product making a compostability claim to meet certain criteria, including meeting the ASTM standard specifications. And, according to that existing statute, PRC §42357, it

would constitute an unlawful compostability claim for the product to be included on the CMC list as compostable.

CalRecycle has not yet named a certifier, as authorized under PRC §42357(g)(1)(A); therefore to be consistent with existing statute, a change in the proposed regulatory language must be made, as we have previously requested.

o Section 18980.2.5(d) states that compostability determinations for the CMC list are based on the "criteria set forth in subdivision (b) of section 18980.3.3. However, the criteria included in section 18980.3.3(b) *alone are not sufficient to determine whether a product can be safely composted* as long as no certifier has been named; such a product is therefore not suitable for inclusion on the CMC list.

o The criteria included in section 18980.3.3(b) are all secondary to the critical performance criteria for a compostable product, namely meeting biodegradation, disintegration, and toxicity requirements that are included in the requirements in section 18980.3.3(a).

We request the language in Section 18980.2.5(d) read:

(d) To update the compostability determinations of the CMC list pursuant to subdivision (e) of section 42061 of the Public Resources Code, the Department shall follow the requirements and apply the criteria set forth in ***subdivisions (a) and (b)*** ~~*subdivision (b)*~~ *of section 18980.3.3 of these regulations.*

Response to B-34-3

Comment rejected. The commenter conflates "covered material" with "covered material category." The commenter even incorrectly describes the list of covered material categories as listing "product[s]," which is impossible: It is a list of categories, not products. Section 18980.3.3(a) through (c) and (b) unambiguously explain the difference with respect to the criteria for eligibility to be labeled "compostable." The list of covered material categories is necessarily categorical and cannot logically address any criteria that applies only on an item-by-item basis. So, if a covered material category is identified as "compostable" on the list, that does not mean that any every item of covered material within that category is excused from having to satisfy all item-by-item criteria for being eligible to be labeled "compostable" (and therefore compliant with Public Resources Code section 42050(b).

Regarding approval of a certifier pursuant to Public Resources Code section 42357(g)(1)(A), the commenter is incorrect that a change in the proposed regulatory language must be made. By its terms, that section does not yet apply. No change is necessary because it is axiomatic that references to it in the proposed regulations, as with the references to it in the statute, have no effect until it takes effect.

The commenter also argues that, "according to [Public Resources Code section 42357], it would constitute an unlawful compostability claim for the product to be

included on the CMC list as compostable." That is nonsensical because, as noted above, a "product" cannot be listed on the CMC list, and the CMC list itself cannot be an "unlawful compostability claim." Moreover, as section 18980.3.3(e) unambiguously explains, the proposed regulations serve only the purpose of determining compliance with the statute being implemented, not compliance with the laws prohibiting deceptive marketing claims. CalRecycle has no enforcement authority regarding unlawful labeling.

Comment B-34-4

• **CalRecycle must remove the references to PRC §42357(g)(1)(B) which is not consistent with legislative intent. [18980.3.3(b)] [18980.3.3(c)(2)]**

California statute contains many criteria for making a valid compostability claim. It seems to be the intention of CalRecycle to continue to refer to only one criterion from this longer list in statute that permit a product to be eligible to be labeled compostable.

o The claim in the ISOR that this is the only logical way to "interpret section 42357(b)(1)(B) for the purposes of...section 42050(b) is unfounded, especially since 42357(b)(1)(B) does not exist. There is no justification given in the ISOR to counter that the legislative text specifically references PRC Chapter 5.7 commencing with PRC §42355; in no way is PRC §42357(g)(1)(B) referenced or implied as a priority criteria in the legislation, and therefore should not be separately called out in the regulations, as the statue directly indicates it is included with all of the other criteria.

o It should be further noted that this particular criterion in PRC §42357(g)(1)(B) related to being allowed in organic compost has no technical merit. The requirement to be allowed in organic compost is arbitrary, and it would be appropriate for CalRecycle to instead reference statute that includes the entire list of criteria for being able to be labeled compostable.

o By choosing one particular criterion, CalRecycle has ignored the clear mandate in SB54 legislative text that the criteria for being eligible to be labeled compostable are established in PRC Chapter 5.7 commencing with PRC §42355.

Section 18980.3.3(b)(1) and (2) of the draft regulatory text creates new criteria which is not consistent with the legislative language in SB54; while some of these are elements are included in PRC Chapter 5.7, beginning with section 42355, it was clear the intent of SB54 was to include products that meet all the criteria in PRC Chapter 5.7 to be eligible to be labeled compostable, not to reproduce specific elements in statute in the regulations, ignoring others.

Section 18980.3.3(b)(1) states that materials must meet the requirements related to the NOP under PRC §42357(g)(1)(B), which is unnecessary, and inconsistent with the legislative language in SB54, which can be found in PRC §42050. The statute in PRC §42050 clearly states that products that meet the requirements in PRC Chapter 5.7 commencing with §42355 are to be included on the covered materials list, which would

include the language in 18980.3.3(b). As a result, we find the current proposal that specifies PRC §42357(g)(1)(B) unnecessary and duplicative, and more importantly, it overlooks the other criteria which are established in PRC Chapter 5.7 commencing with §42355, which are relevant and important for materials.

o Section 18980.3.3(b)(2) specifies additional criteria for items, but that criteria is already referenced in 18980.3.3(a), and therefore, is duplicative and irregular to arbitrarily call out individual sections which are included in 18980.3.3(a), when this can simply be directly referenced as it was in the legislation.

It should also be noted that at this time, in section 18980.3.3, *there is no requirement for any products "eligible to be labeled compostable" to be tested or certified*, because CalRecycle has not approved a third-party certifier as indicated in section 18980.3.3(c)(3).

Secondarily, none of the compostable products subject to section 18980.3.3 must meet the testing requirements, because all the requirements listed in this section that are applicable are for the materials in the products rather than the finished products themselves. This is a second significant oversight that would be devastating for both compost quality and the environment. CalRecycle must ensure finished products are required to meet the performance standards established in ASTM D6400 and ASTM D6868, as specifically directed in PRC 42357(a)(1); otherwise, there is no assurance that they will biodegrade, disintegrate, and be safe for compost. The language in section 18980.3.3(c)(6) is not sufficient to prevent the harm that will result from this regulation which is not consistent with existing statute. Those harms may include: increased confusion in the market from consumers; effective penalties for compostable product producers who do the right thing and certify their products; and ultimately, potential generation of low-quality compost that could damage the environment.

We request the language in Section 18980.3.3(b) read:

(b) The list published by the Department pursuant to subdivision (d) of section 42061 of the Public Resources Code shall identify each covered material category that ***meets the criteria in PRC section 42355-42357.5*** *~~[satisfies both of the following conditions: (1) There are materials within the covered material category that satisfy the requirements set forth in subparagraph (B) or paragraph (1) of subdivision (g) of section 42357 of the PRC. (2)]~~. The covered material category may encompass any ~~covered material that, if used by~~ individual items that* ***meet the requirements to be eligible to be labeled compostable as described in Section 18980.3.3(a)*** *~~[meets the requirements set forth in paragraphs (3) through (5) of subdivision (c), would be eligible to be labeled compostable~~].*

Response to B-34-4

Comment rejected. The commenter demands that CalRecycle remove references to Public Resources Code section 42357(g)(1)(B). However, the regulatory text at issue (18980.3.3(b)) concerns the categorical list that

CalRecycle publishes pursuant to Public Resources Code section 42061(d). Accordingly, the proposed regulation specifically "call[s] out" 42357(g)(1)(B) because it, as opposed to the other requirements in 42357(g), applies on a categorical basis rather than a product-specific basis. Nothing in the proposed regulatory text implies in any way that any other criteria will be ignored with respect to a particular material's eligibility to be labeled "compostable." In reaching the opposite conclusion, the commenter appears to be misreading 18980.3.3(b) as stating all the criteria applicable to covered material individually; however, 18980.3.3(b) unambiguously states that it concerns how CalRecycle will evaluate covered material categories for purposes of the covered material category list only.

Regarding the allegation that the criterion in Public Resources Code section 42357(g)(1)(B) has "no technical merit," whether that allegation has merit is irrelevant to this rulemaking because CalRecycle cannot change or remove that criterion, which, as the commenter acknowledges, "is included with all of the other criteria" incorporated into the statute (Public Resources Code sections 42050(b) and 42061(d)).

The commenter recommends certain changes to 18980.3.3(b) to address their concerns. Those changes would be nonsensical because it is logically impossible for a "covered material category" to meet all the criteria in Public Resources Code section 42355 through 42357.5. Those criteria, such as the requirement concerning PFAS concentration (42357(g)(1)(C)) and, in particular, the certification requirement about which the commenter expresses great concern, are product- or material-specific and cannot possibly be applied on a category-by-category basis.

Comment B-34-5

• **CalRecycle must define a responsible end market for compostables that will allow all covered products equal access. [18980.4(a)(4)(B)], [18980.4(a)4(C)]**

We find it highly irregular that requirements for individual items are specified to have different end market requirements. It far exceeds CalRecycle's authority to arbitrarily create different criteria for products that *are processed together* in the *same process* for composters *who run a single process* to compost a broad diversity of products and manufacture the *same compost*.

At the May 27, 2025 workshop, CalRecycle disclosed that this decision was taken because compostable plastic items and paper items have different responsible end markets. This reveals a fundamental lack of understanding of both compostable products and composting by CalRecycle. We ask that if CalRecycle is going to assert such a position, that they must provide the evidence that indicates this is indeed the case and explain why it is the case, as it is absurd on its face.

In general, we support requirements for a composter to demonstrate that they can process the covered materials, but the requirements in 18980.4(a)(4)(B) are impossible for a composter to achieve. First, "biologically decompose" has no scientific definition, so there is no technical criteria a composter could meet to demonstrate they are in compliance with the regulations. Secondly, conversion to carbon dioxide can only be monitored in a closed system, which therefore must take place in a laboratory. We have previously submitted that if a composter makes compost of sufficient quality, then 1) it must meet the regulatory requirements for compost quality in California, and 2) that the composter manages their process such that they make stable and mature compost, in particular as described in ASTM D8618 or ASTM D8619, which define the requirements for stable and mature compost.

Because the language in 18980.4(a)(4)(B) makes it impossible for a composter to comply, it therefore blocks the end market for compostable plastic products, which is arbitrarily defined set of products, and it harms composters who wish to accept compostable plastics, since they would be required to run a process that has to meet not only arbitrary, but unknown, criteria for their finished product.

The ISOR states that certified compostable plastics cannot be a "recycled organic product", presumably because CalRecycle does not believe they are "organic solid wastes"; however, this is not correct. Certified compostable products are organic materials, as they are comprised of carbon, and like all organic materials collected for composting, they are capable of biodegrading by the action of naturally occurring microorganisms in a composting facility, at a rate consistent with other feedstocks and without harmful effects. While current regulations allow composters to have a de-minimis level of persistent plastic contamination, like their fiber-based counterparts, certified compostable materials will also continue to biodegrade over time, ultimately leaving no persistent microplastics.

The language in 18980.4(a)(4)(B) was formerly applied to all covered materials, but in this version of the regulations, a composter who accepts fiber-based products (and an unclear and arbitrary selection of other products) can be a responsible end market, since the resulting compost must only meet a few of the current state regulations for compost quality. While we appreciate this change, we advise that it is woefully insufficient unless it includes criteria for stable and mature compost. Otherwise, the output of the composting facility will not be stable and will only be appropriate for use in limited applications. Furthermore, this section must be properly applied to all covered materials, not an arbitrary subset.

In an analogous case for recycling, it would not be appropriate or proportional for CalRecycle to declare that a responsible end market for one plastic chemistry type has criteria impossible to achieve, and another type of plastic chemistry responsible end market would have a very low performance requirement. Or, perhaps more relevant, would be a case where CalRecycle decided that metal recycling had a low bar to be considered a responsible end market, but plastics recycling was impossible to achieve because there were no defined criteria that could be met to demonstrate compliance.

We ask CalRecycle to explain why it is fair and equitable that a composter who wishes to accept compostable plastics is effectively prohibited from doing so under these regulations, receiving no funding or support for processing them or developing education programs that help residents and businesses divert organic waste.

In addition to creating an unlevel marketspace, Section 18980.4(a)(4)(C) also creates a number of problems related to terminology. First, we have to point to the fact that CalRecycle has grievously erred in not properly including the definition of "polymer"; please see our earlier comments on that definition and the resulting impact as it relates to fiber products.

Secondly, this section also refers to materials made from "natural resources" which, is undefined, and that the references to "mineral origin" or "fossil fuels" are not correct in this context. If terms with no definition or terms with the wrong definition are used throughout the regulations, it is not clear how the resulting EPR program will function, as it will lack a clear and valid framework; market participants will not be clear how they can comply.

We further object to the fact that section 18980.4(a)(4)(C) appears to allow all compostable products except those with fossil content to be included, although, that is incompatible with both the language in this section as well as what is described in Section 18980.4(a)(4)(B). It is also inconsistent with the statutory text in SB54. Most importantly, though, it is well-known that there are certified compostable resins made with fossil sources and there is no reason to exclude a product with proven performance from participating in this EPR program due to an arbitrary and out-of-scope opinion on covered material feedstocks. Indeed, it must be noted that all certified composable products, regardless of the origin of the feedstock, are tested and certified to ensure they are both biodegradable and will not have harmful effects, and they will continue to biodegrade after the composting process is complete, should a very small piece remain at the end of the composting process.8,9,10 Nothing in SB 54 authorizes the inclusion of this discriminatory requirement; and if CalRecycle believes it has the legal authority to impose such a requirement, we specifically ask that they point it out.

Therefore, we ask CalRecycle to adopt the following language for Section 18980.4(a)(4)(B), and to remove newly added Section 18980.4(a)(4)(C) entirely:

~~*[For items partially or wholly constituting plastic, any covered material or derivative material intentionally included in the process used to generate a recycled organic product must fully biologically decompose. The entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).]*~~ ***Any covered material intentionally included in the***

process used to generate a recycle organic product may be processed in a manner consistent with the management of other feedstocks to produce a stable and mature marketable product as described in ASTM D8618 or ASTM D8619, and which complies with the standards found in sections 17868.2, 17868.3, and 17868.3.1 Of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17869.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations.

Response to B-34-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and the recommended change is not necessary to the implementation of the Act. To the extent this comment recommends subjecting end markets for materials identified in sections 18980.4(a)(4)(B) and (C) to the same standard, see the response to comment B-6-5. To the extent this comment suggests that the standard for end markets identified in section 18980.4(a)(4)(B), including the standard for full biological decomposition, is unclear, impractical, or impossible, see the response to comment O-75-12. Furthermore, to the extent this comment suggests additional support or investment may be needed to ensure the standard of section 18980.4(a)(4)(B) can be satisfied, see again the response to comment B-6-5. Moreover, to the extent this comment is concerned that the standard for end markets identified in section 18980.4(a)(4)(C) is insufficient to ensure that compost will be stable and mature, no change is necessary because that standard, which already provides for both the biological decomposition of covered materials and a marketable product that complies with applicable regulatory standards, is adequate to ensure that such end markets generate a recycled organic product that meets the quality standards necessary to be used in the marketplace, consistent with PRC section 42041(aa)(1) and section 18980.4(b) of the proposed regulations. See the response to comment O-83-5. See also the response to comment O-83-5 with respect to the ISOR's characterization of plastics and recycled organic product. To the extent this comment is concerned with the application of these standards in the context of the definition of "polymer," CalRecycle has separately addressed the commenter's concerns regarding the definition of "polymer" elsewhere in this submission. See the responses to comments B-34-2 and B-14-2. Finally, to the extent this comment suggests that the current standard of section 18980.4(a)(4)(C) impermissibly excludes certain products "from participating in this EPR program," CalRecycle rejects this comment. Sections 18980.4(a)(4)(B) and (C) do not exclude any material from participating in the program; rather, those sections specify the standards that end markets for certain materials must meet to be considered a responsible end market for those materials. Other provisions of the proposed regulations, including, for instance, sections 18980.4(a)(4)(A), 18980.4(b)(7), 18980.4(b)(8), 18980.4.1(d), and 18980.4.3(b) provide potential alternative opportunities for materials that are covered by the Act to be recycled in a manner consistent with PRC sections 42041(aa) and

42041(ad). Therefore, no change to section 18980.4(a)(4)(B) or (C) of the proposed regulations is necessary.

Comment B-34-6

• **CalRecycle must make corrections relating to compostables for eco-modulation fees with respect to setting the base fee [18980.6.7(e)] and the adjusted fees, or malus fees [18980.6.7(f)]**

We have asked for this problematic language to be addressed in previous versions because it is statutorily irrelevant, would cause harm to products making legitimate compostability claims, and would increase confusion in the consumer markets. The language being proposed allows arbitrary and unsubstantiated claims.

o In proposed section 18980.6.7(e)(1)(A), the regulatory text states that a PRO shall include a justification of the base rate for a given material, and it is stated that data pertaining to the "biodegradation or disintegration rate of compostable covered materials" is relevant. This provision needs to be removed, as there is no clear statutory directive to include this provision, and in practice, it would set the compostable products industry back over 20 years to a time when these types of invalid and arbitrary relational claims were regularly made.

Nowhere in statute does it indicate that CalRecycle should use "biodegredation or disintegration rate[s] of compostable covered materials" as a metric for setting a base rate for compostable products. We do not see a justification outlined in 42053(d)(1), nor in 42053(d)(2), and subsections (d)(3) and (d)(4) are unrelated. Therefore, we specifically ask CalRecycle to justify the inclusion of this provision in the regulatory text.

In practice, "biodegredation or disintegration rate[s]" are not appropriate metrics; rather, certified compostable products meet pass-fail criteria, and meeting these criteria confirms their performance. The very purpose of the certification is to prevent producers from making arbitrary and unsubstantiated claims about a "degree" of compostability that cannot be compared in a relevant fashion. As iterated above, this section (18980.6.7(e)) references PRC 42053(d) which addresses the ease and cost of composting, based on specifically outlined considerations in subsections (1)(A)(E)); it does not address biodegradation or disintegration rates. It is therefore outside the scope of the statute for CalRecycle to arbitrarily create a forum for making false claims, as there is no way to scientifically demonstrate any relevant information on this topic for the purposes of setting rates.

Secondly, the sentence in 18980.6.7(e) regarding biodegradation and disintegration rates of compostable covered materials is used in parallel with recycling rates. These are two entirely separate criteria; recycling rates have to do with the volume of material being processed; biodegradation rates and disintegration rates have no bearing on volume or throughput. If CalRecycle is looking for parallel criteria in the composting industry, then we suggest considering the frequency of processing a given compostable item, even though that has no specific relevance for composters.

We wish to make clear that, in practice, ease and cost of composting a product come from a number of factors independent of the product, as noted in PRC 42053(d)(1). These factors include the origin of the organics feedstock stream (residential, industrial, commercial, institutional), the mix of the feedstocks (back of house or front of house), and the contamination that may come along from that location (based on composter ability to provide waste generator feedback and education programs). It should be left to the PRO to determine what criteria best fit the base rates once the needs assessment is complete. In particular, we raise this because education is the responsibility of the PRO. We ask CalRecycle to remove the reference to biodegradation and disintegration rates of compostable covered materials in 18980.6.7(e)(1)(A), as this is clearly out of scope of the statute.

Therefore, we propose the following language for Section 18980.6.7(e)(1)(A):

In setting the base fee rates, a PRO shall include a justification of each rate. The justification shall address each factor specified in subdivision (d) of section 42053 of the Public Resources Code. The justification for fees shall be informed, at a minimum, by the relevant data, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to ***frequency of use*** *[~~the biodegradation or disintegration rates~~] of compostable covered materials* ***determined by the needs assessment or other waste audit****.*

o For the same reason, we ask that “data pertaining to biodegradation or disintegration rates of compostable covered materials” be stricken from 18980.6.7(f)(1) related to setting malus fees. This language is not in SB54 nor in any other statute, and CalRecycle should refrain from introducing this provision in the regulations. In particular, in 18980.6.7(f), all the attributes designated for malus fees and credits are related to attributes of products that are not associated with end-of-life performance which is already addressed in the covered material categories. It relates to quantity of material, use, feedstocks, and other attributes of products that can affect environmental impact or help modify consumer behavior and result in higher composting rates (e.g., PRC 42053(e)(5)). We suggest that this section is designed for products that are causing contamination at composting facilities, so capturing the contamination rate is most relevant for the assigning of malus fees for noncompostable products, as it is well-known this is one of the biggest challenges composters face at this time. Malus fees are intended to be the feedback loop for problematic products, and the end goal is to ensure that composters are successful in their endeavors. Composters do not have a sorting pre-process like recyclers do, so it is especially important that contamination is addressed at the source.

Therefore, we propose the following language for Section 18980.6.7(f)(1):

The justification shall be done by covered material category and shall address each factor specified in subdivision (e) of section 42053 of the Public Resources Code. The justification for malus fees and credits shall be informed, at a minimum, by the relevant date, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to ***rate of contamination in composting facilities*** *[~~biodegradation or disintegration rates of compostable covered materials~~].*

Response to B-34-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42050, 42053, and 42060 of the Public Resources Code, and the recommended changes are not necessary to the implementation or enforcement of the Act. PRC section 42053(d) authorizes a PRO to structure the producer fee schedule based on factors including the costs incurred to process and transport covered materials in a manner and quality sufficient for acceptance by viable responsible end markets. Consistent with section 18980.4(a)(4)(B) of the proposed regulations, the material accepted by a responsible end market that generates a recycled organic product must be capable of fully biologically decomposing, and the relevant language in sections 18980.6.7(e)(1)(A) and (f)(1) relates to the manner and quality of covered material sufficient for acceptance by such end markets. Moreover, consistent with PRC section 42053, section 18980.6.7 of the proposed regulations allows a PRO to determine how to weigh the various factors in determining the appropriate fees under that section. Therefore, to the extent this comment argues it should be left to a PRO to determine what criteria best fit the base rates, the proposed regulations already do that by allowing the PRO, in its discretion, to determine how to weigh the applicable criteria in its justification.

Comment B-34-7

• **We request an edit to the definition of "renewable materials". [18980.6.7(j)(1)]**

We again request that CalRecycle use terms with scientific accuracy and in a responsible manner, instead of using undefined terms or terms with clear meaning in a context that does not make sense.

First of all, "renewable materials" should be inclusive of all renewable feedstocks, and it can be simplified to use common terms that are recognized globally, instead of introducing new and undefined terms, such as "natural resource".

It should be noted that "minerals" are not a feedstock for plastics; "minerals" are commonly understood to be inorganic materials, and they would not contain any carbon suitable for making a plastic, which is an organic, carbon-based product. Additionally, "fuels" are not feedstocks for plastics either; fossil resources such as oil and gas are feedstocks. We therefore also ask that the reference to "fuel" be

removed. Furthermore, because of limited access to biobased feedstocks, we ask that the requirement to be "wholly derived" be removed. The renewable feedstock content can be readily reported, and therefore, credit should be prorated accordingly. Finally, the meaning of "without resulting in the net depletion of any of the resources" is not clear. Any feedstock used to create a product will be consumed in the manufacturing process. If the idea is to consider rapidly renewable sources, then this should be defined, using terms that are already well-known and understood, such as "renewable" and "biogenic" as defined in ASTM D6866. It should be noted that these terms are also used in 18980.4(a)

We also want to make clear that the reference to "renewable materials" in PRC §42053(e)(7) is the *feedstock* of the plastic, not the final article which is stated to be *derived* from these feedstocks.

We propose and request adoption of the following:

"Renewable materials" for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code means ***feedstocks*** *[~~materials~~] that are made using* ***renewable or biogenic carbon that is not of fossil origin*** *[~~a natural resource that is not of mineral or fossil fuel origin, without resulting in the net depletion of the resource~~]. Examples of potentially renewable material include those derived from wood, mycelium, algae,* ***animals****, or plants such as cotton, corn, sugar cane, or wheat.*

Response to B-34-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and the recommended changes are not necessary to the implementation or enforcement of the Act. PRC section 42053(e)(7) requires a PRO to reduce producer fees using credits for plastic covered materials that are derived from renewable materials. Section 18980.6.7(j) of the proposed regulations implements this requirement by defining "renewable materials" for the purpose of PRC section 42053(e)(7). The definition in section 18980.6.7(j)(1) is clear, understandable, and consistent with the producer fee schedule framework established in PRC sections 42053(c), (d), and (e). To the extent that this comment suggests the definition is unclear, imprecise, or overly stringent in its requirement for materials to be wholly derived, CalRecycle rejects this comment. It is necessary for only plastic covered materials that are wholly derived from renewable materials to receive a reduced fee, as opposed to plastic covered materials that are not wholly derived from renewable materials, because this establishes a rule of uniform application within which the PRO can exercise its discretion and because this rule is consistent with the intent of the eco-modulation framework. Moreover, to the extent the commenter believes the definition is unclear or imprecise, section 18980.6.7(f)(1) requires the PRO to justify its award of fee credits and section 18980.6.7(j)(2) requires the PRO to specify in its justification the feedstocks used to produce the covered material. This requirement further ensures that CalRecycle will have the opportunity to verify that fee credits will

only be awarded in a manner that is consistent with PRC section 42053(e)(7). No further change is necessary.

Comment B-34-8

• **<u>We request clarification on renewable carbon credits. [18980.6.7(j)(2)]</u>**

It should also be made clear that credits should be applied according to the percentage of biogenic carbon in the feedstocks of the article. Instead of specifying the source of the feedstocks, which is not relevant to the final article, or could be variable, such as in the case where agricultural waste products are used, producers should present a certification that verifies the biogenic carbon content of the feedstocks.

We ask CalRecycle to adopt the following approach and specific regulatory language for Section 18980.6.7(j)(2):

When awarding a credit to participant producers, the PRO shall ***apply credits according to the percentage of measured or attributed biogenic carbon in the feedstocks, when that percentage is confirmed by a third-party certification*** *~~[in its justification specify the feedstocks used to produce the covered material].~~*

This language will help support a transition to renewable feedstocks by allowing for innovation and create rewards based on merit, not arbitrary claims.

Response to B-34-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule that includes producer fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e), including the factor specified in PRC section 42053(e)(7). Section 18980.6.7(j)(2) implements this provision by specifying that, when awarding a credit to producers pursuant to PRC section 42053(e)(7), a PRO must specify in its justification the feedstocks used to produce the covered material. The purpose of section 18980.6.7(j)(2) is to require a PRO to specify to CalRecycle the particular types of renewable materials have been incorporated into the covered material without encroaching on the PRO's discretion to adjust fees based on PRC section 42053(e)(7) as it deems necessary. Therefore, this regulatory provision strikes an appropriate balance between reserving the necessary discretion for a PRO to establish and develop the producer fee schedule with the requisite fee adjustments and providing CalRecycle with sufficient opportunity to review and oversee the PRO's development and administration of its producer fee schedule. No further changes are necessary.

Comment B-34-9

• **CalRecycle should update the certification section allowing for sufficient time to come into compliance. [18981(b)]**

We would again request that the certification body is given a reasonable amount of time to come into compliance with the ISO17065 accreditation, and that the associated products have an additional three years to come into compliance, as long as the certification body is already accredited. This is consistent with current three-year product certification cycles, and it will allow producers to comply without causing massive disruption in testing labs for unnecessary repeated testing and recertification. We support the comments submitted by the Biodegradable Products Institute on this technical matter.

We thank you for the opportunity to comment and appreciate your consideration of the changes we have put forth above. We would welcome the opportunity to discuss these topics and others related to the implementation process for SB54.

Response to B-34-9

Comment rejected. No time is needed to allow any entity to "come into compliance with the ISO17065 accreditation" because the requirement for certification does not apply until one year after CalRecycle approves an ISO/IEC 17065-accredited entity in the first place. Moreover, PRC section 42357(g)(1)(A) does not authorize CalRecycle to modify that timeline.

B-35: Imperial Bag and Paper Co LLC DBA Imperial Dade (Kevin McGrath)

Comment B-35-1

Imperial Dade (“Imperial”) is an intermediary distributor of various foodservice, janitorial and sanitation, office supplies, packaging, and personal protection & safety products across the United States, including in California. Imperial is providing comments on the most recent update to the Proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (“Act”) Regulations published for comment on August 22, 2025 (the “Proposed Regulations”).

We appreciate the opportunity to provide our feedback in order to obtain clarification of Producers’ data reporting and fee obligations, among other requirements, under the Proposed Regulations.

Response to B-35-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-35-2

Producers1 Need Greater Clarity Regarding Reporting Requirements and Deadlines (Sections 18980.6.1, 18980.6.5, 18980.9, 18980.10.1–.2)

The Proposed Regulations, include several reporting deadlines, including for Annual Reports, Source Reduction Baseline, and Data Reporting. In order for the PRO to comply with these requirements and gather data from participant Producers, it is expected that the PRO will develop the applicable requirements and then ask its participant Producers to comply. However, the reporting requirements, including those listed in Section 18980.10.2, are not currently workable. While Imperial applauds the updates in the Proposed Regulation that would delay most PRO reports until July 1 or October 1 of each year after the PRO plan has been approved, this delay does nothing to help Producers who remain subject to PRO deadlines in the coming months and still lack guidance on what will need to be reported.

The Act gives the PRO the ability to clarify reporting requirements but without any affirmative requirements or deadlines that the PRO must meet in doing so. The PRO, Circular Action Alliance ("CAA"), has purportedly already published guidance clarifying these reporting requirements but will only release such guidance to Producers that have registered. In addition, while the Proposed Regulations would not require Producers to register with a PRO within 30 days of the effective date of the Proposed Regulations, if and when finalized, CAA purports that the deadline to register has already passed, on September 5, 2025. In addition, CAA has established a reporting deadline of November 15, 2025, which may be before the effective date of the Proposed Regulations, while the Proposed Regulations themselves would require Producers to report the necessary data to the PRO concurrent with registering despite the fact that, again, CAA will not provide guidance on reporting until *after* registration.

The Proposed Regulations as currently drafted impose a substantial burden on Producers given the time and resources required to implement data gathering techniques and analytic applications to collect required data in one place in a way that Producers can provide it to the PRO. Producers need time to implement systems to collect the required information and to implement budgets and allocate staff to support these activities. Imperial also believes that the data reporting requirements in the Proposed Regulations will be difficult for the PRO and CalRecycle to implement and administer because of this lack of clarity.

Imperial requests that CalRecycle modify the language of the Proposed Regulations to extend the reporting dates for Producers until at least six months after the deadline to register with the PRO so that Producers can establish the mechanisms internally that are needed to comply with these requirements. For this reason, CalRecycle should modify the data reporting requirements further so that it is clear to Producers exactly what data the PRO will require Producers to report, and establish a reasonable reporting deadline. Additionally, Imperial requests that CalRecycle consider including a "grace period" for reporting errors in the first year following each Producer deadline, to give time for Producers to work through these novel processes.

Response to B-35-2

CalRecycle rejects this comment as the reporting date of July 1, 2026 is necessary to ensure the statutory requirements are sufficiently and timely met, including section 42051(b) of the PRC. Section 42051(b) requires that upon approval of a plan or commencing January 1, 2027, whichever is sooner, a producer shall not sell, offer for sale, import, or distribute covered materials in the state unless that producer is covered by a PRO plan or is approved by CalRecycle as an Independent Producer. Therefore, by no later than January 1, 2027, producers should be complying with the Act and regulations. Thus, requiring the reports to be submitted to CalRecycle on or before July 1, 2026 gives the Department six months after the latest possible statutory date. This provides a balance by allowing adequate time for all reporting entities to gather the necessary information for the report, while also ensuring CalRecycle receives the information as expeditiously as possible to make any necessary updates to the source reduction baseline. Further, the July 1, 2026 date also aligns with the annual reporting dates including section 18980.6.5(a) of the proposed regulations, which should make for more efficient reporting. As this regulation is necessary for implementation of the Act and aligns with statutory requirements while striking a balance between both adequate time for the reporting entities and adequate time for the Department, no change is required as it would undermine the above.

With regard to the requested "grace period," the commenter requests that CalRecycle essentially create new carveouts that are not consistent with the statutory requirements, including the reporting required in section 42057 of the PRC, as well as the enforcement sections 42080 through 42081 of the PRC. The Department both declines and does not have the requisite authority to create the requested general and vague additional regulatory provision that would essentially exempt or shield reporting entities from penalties for reporting errors, which would exceed the Department's statutory authority and undermine statutory text as referenced above. Lastly, it is worth noting that the Department did reduce the burden on reporting entities in previous versions of proposed regulations by requiring reporting to be in annual increments rather than monthly increments to find a balance between the statutory requirements, information needed by the Department, and requirements of reporting entities. Thus, the Department rejects this comment.
See responses to comments I-63-15, B-27-2, I-63-15, O-48-5, and O-41-4 for additional information.

Comment B-35-3

CalRecycle Should Direct PROs to Allocate Fees to Producers Based on Level of Control over Packaging Content (Section 18980.6.7)

We understand that the way the various fees operate in both the Act and the Proposed Regulations are complex because they are designed to accomplish a number of

different goals. However, consistent with the requirements in Cal. Pub. Res. Code Ann. § 42053–53.5, it would be beneficial for all parties if CalRecycle provides direction to the PRO to assess individual annual Producer fees based on the “type” or “class” of Producer, varying such fees based on whether the Producer is a manufacturer, licensee, intermediate distributor, supplier, or retailer. This change would empower the PRO to charge parties that have the most control over the content of the packaging more fees to further the statute’s twin goals of increasing recycled content in packaging and supporting recycling infrastructure in the state, while charging parties with less control, e.g., an intermediate distributor, lower individual annual Producer fees.

CalRecycle should also consider setting a limit on annual individual Producer fees that the PRO can charge different types or classes of Producers, with a higher limit for parties that have the most control over the content of the packaging.

Response to B-35-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041, 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42041(w) allows a producer to be identified with respect to any given covered material according to a tiered list of conditions. Section 18980.1.1 of the proposed regulations implements this provision by specifying the process and requirements for identifying a single producer for a given covered material according to this tiered list. Once a producer is identified according to the tiered list of PRC section 42041(w), nothing in the Act permits the producer to be treated differently according to whether they are a producer under PRC section 42041(w)(1), (2), or (3). Indeed, a fundamental premise of the Act is that the producer is identified as such, and is thus subject to the Act, because it exercises sufficient control over the regulated covered material in the state such that it should bear responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. See, e.g., PRC section 42040(b)(3)(B). Therefore, nothing in the Act permits CalRecycle to require or instruct the PRO to assess individual producer fees based on the "type" or "class" of producer. Moreover, to the extent this comment recommends setting a limit on annual individual producer fees that the PRO can charge, no such change is appropriate. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule that includes producer fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e). As such, under PRC section 42053(e) and sections 18980.6.7(b), (f), and (j) of the proposed regulations, the PRO retains the discretion to determine and charge eco-modulated fees in a manner that it deems appropriate so long as it is consistent with the requirements of the Act. No further change or limit on this discretion is necessary.

Comment B-35-4

CalRecycle Should Not Require Payment of Fees Prior to Approval of a Plan (Section 18980.6.7)

Imperial urges CalRecycle to revise the Proposed Regulations to ensure that fee payments are not required prior to the approval of a PRO plan and a demonstration by the PRO that it has collected sufficient data from all covered producers. As noted earlier, it will be difficult for Producers to timely gather accurate data, especially if reporting is required prior to accessing the reporting guidance published by the PRO. As a result, early fees will likely not be representative of the actual impacts of any given Producer and changes will be required as more accurate data becomes available.

If CalRecycle maintains the requirement for early fee payments, then the regulations must include a transparent and mandatory process for refunding overpayments or adjusting future fees to compensate for any disproportional contributions. This would ensure fairness and incentivize timely reporting, while protecting smaller distributors from bearing an excessive financial burden due to systemic delays or data gaps.

Response to B-35-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. To the extent this comment recommends prohibiting producer fee payments prior to the the approval of a PRO plan, such change is not necessary or appropriate. PRC section 42053(b) explicitly requires the PRO to determine the producer fee schedule based on specified conditions "during the preparation of the plan." Therefore, the Act clearly allows, and indeed requires, the assessment of producer fees based on limited factors even before the PRO plan is approved. Moreover, to the extent this comment is concerned with the lack of data to support producer fees in the early years of operation, see the response to comment B-13-12. Finally, to the extent this comment recommends including a mandatory process for refunding overpayments or otherwise compensating producers for past contributions, see the response to comment B-36-6.

Comment B-35-5

CalRecycle Should Remove Certain Other Language Regarding Fees and Credits (Section 18980.6.7)

The Proposed Regulations includes an option in section 18980.6.7(e)(1)(A) for the PRO, in setting the base fee rates for each covered material category, to include a justification “of the methodology used to derive rates” instead of a justification of the underlying base fee rate itself. Imperial is concerned that this could lead to reduced transparency for participant Producers regarding how their base fee rates were determined because disclosure of the methodology only could obscure relevant information that the PRO would be required to disclose if the regulations required the

PRO to justify each base fee rate. We encourage CalRecycle to remove this language in section 18980.6.7(e)(1)(A) and instead require a justification of the rate itself..

Additionally, CalRecycle should remove the added language that requires renewable materials to be “wholly derived from” renewable resources from section 18980.6.7(j)(1) for purposes of the Producer credit. While Imperial understands and appreciates the goal of incentivizing the creation of plastic covered materials that include the maximum amount of renewable resources possible, Imperial is concerned that the new requirement that plastic covered materials be derived from materials that are “wholly derived from” natural resources is practically impossible. Inclusion of the “wholly derived from” language could lead to Producers being disincentivized from adding renewable materials to plastic covered materials if they know they will not meet the standard to receive the credit. Said another way, the inclusion of “wholly derived from” in the renewable materials definition creates a requirement for the credit in which the perfect is the enemy of the good.

To encourage the maximum number of Producers to pursue the credit for renewable materials, and therefore to create more plastic covered material with renewable material content, Imperial recommends deletion of the “wholly derived from” language in section 18980.6.7(j)(1).

Response to B-35-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051, 42051.1, 42053, and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Sections 42053(a) and (c) authorize a PRO to exercise its discretion in establishing a producer fee structure that is sufficient to ensure the requirements of this chapter are met by the PRO and the plan is fully implemented. Pursuant to those sections, the producer fee schedule must be based on the factors established in section 42053(c) and must ensure that the PRO budget included in the plan pursuant to section 42051.1(j) is fully funded without passing any costs on to consumers as a separate item on a receipt or invoice. Section 18980.6.7(e)(1)(A) of the proposed regulations is consistent with these statutory requirements by allowing a PRO to include a justification of the base fee rate or of the methodology used to derive the base fee rate for each covered material category. Section 18980.6.7(e)(1)(A) is designed to ensure CalRecycle receives the information necessary to verify whether a PRO satisfies the requirements of sections 42053(a) and (c) in its establishment of the producer fee schedule, while still reserving sufficient flexibility for the PRO to exercise its discretion and to avoid any unnecessary or burdensome administrative costs associated with including such justification. If a PRO determines that it would be less costly or otherwise preferable to include a justification of the methodology used to derive the base fee rate, rather than a justification of the base fee rate itself, that is permissible and consistent with the requirements of the Act so long as the requirements of section 42053(a) and (c) are satisfied. As such, no change to the

proposed regulations is necessary.

To the extent this comment recommends removing the "wholly derived from" requirement of section 18980.6.7(j)(1), no change is necessary. PRC section 42053(e)(7) requires a PRO to subject plastic covered materials derived from renewable materials to a reduced fee relative to plastic covered materials derived from a nonrenewable material. Section 18980.6.7(j)(1) of the proposed regulations implements this requirement by clarifying that "derived from," for the purpose of this section, means "wholly derived from." This language offers additional clarification while supporting the overarching intent and purpose of the Act. To the extent this comment is concerned that producers may be disincentivized from adding renewable materials to plastic covered materials if they know they will not meet the standard to receive the credit, such credits may still be available to those producers through other provisions, including, for instance, PRC sections 42053(e)(1) or (e)(6). Therefore, the current language ("...wholly derived from...") is sufficiently clear and consistent with the relevant statutory provisions, and no changes to the proposed regulations are necessary.

Comment B-35-6

Penalties for Producers that Stop Manufacturing or Distributing a Non-Compliant Product Should have a Clear End Date (Section 18980.13)

For violations of Cal. Pub. Res. Code Ann. § 42050, source reduction requirements, previous drafts of the regulations stated that violations would "be deemed to end as of the date the Producer of the product ceases manufacturing and distributing the non-compliant product." The Proposed Regulations would remove that end date, so it would now be uncertain whether penalties would cease to accrue even if a manufacturer or distributor ceased manufacturing or distribution of the non-compliant product in California. This is especially significant because violations accrue per day, with potentially devastating consequences of up to $50,000 per violation per day under section 42081 of the statute. Producers require certainty that, if they exit the state, penalties will stop accruing. Relatedly, given the complexity of this regulatory scheme, it will be important to provide Producers with a grace period to return to compliance if they are making reasonable, good faith commercial efforts to comply, rather than to impose steep penalties on a per day basis, beginning 30 days after notification of a violation under section 42081(a)(3). The fact that CalRecycle "may" allow Producers to return to compliance without a corrective action plan is insufficient comfort or assurances for Producers who inadvertently violate the statute despite reasonable, good faith commercial efforts to comply.

Response to B-35-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051, 42057, 42060, 42080, and 42081, and no change is necessary to the implementation or enforcement of the Act. PRC sections 42050(a) and 42057(a) clearly require a PRO to achieve the 25-percent source reduction requirement for all plastic

covered material sold, offered for sale, imported, or distributed in the state. While manufacturing is relevant to the identification of a producer under PRC section 42041(w), the act of manufacturing covered material—as opposed to the act of selling, offering for sale, importing, or distributing covered material—is not relevant to the source reduction requirements of PRC sections 42050(a) and 42057(a). Consistent with these provisions and with PRC sections 42080 and 42081, section 18980.13(h) of the proposed regulations provides that violations will be deemed to occur on each day that the product using non-compliant covered material is in distribution or offered for sale in the state. Section 18980.13(h) is therefore consistent with the source reduction requirements of PRC sections 42050(a) and 42057(a). Moreover, consistent with these provisions, a producer or a PRO on behalf of a producer will only be deemed to be in violation of the Act and subject to penalties for the actual sales, offers for sale, imports, or distributions of non-compliant covered material to which the producer itself is a party. Finally, to the extent this comment recommends a grace period for producers of non-compliant covered material before penalties are imposed, no change is necessary. The 30-day period established in PRC section 42081(a)(3), the corrective action plan process established in PRC section 42081(b)(1), and CalRecycle's enforcement discretion under, among other provisions, PRC section 42081(c) already provide a sufficient amount of flexibility and opportunity for the avoidance or reduction of penalties under the Act. Therefore, no change is necessary.

Comment B-35-7

CalRecycle Should Make Accommodations for Small Producer Acquisitions (Section 18980.5)

Imperial requests that CalRecycle include a provision providing for a one year grace period to come into compliance when an exempt Small Producer is acquired by an existing Producer. Unlike new producers entering the market for the first time or a Small Producer expanding operations that can plan for compliance in advance of such a move, acquisitions of Small Producers that did not otherwise intend to come into compliance may occur on short notice without time to build the appropriate data collection systems. In addition, an acquiring Producer will not have access to the Small Producer’s systems until the deal is complete and it may take the acquiring Producer significant time to compile data produced by the Small Producer into a reportable format that works with the acquiring Producer’s systems. A slight delay in compliance to allow for integrating the new entity is not only reasonable, but ensures that the market can continue to function normally and the Act can achieve its goals. If companies will be hit with large fines for acquiring smaller entities, there will be no incentive to ever purchase such entities. Small Producers would thus remain Small Producers, exempt from the Act’s requirements, and the economy would not benefit from other efficiencies brought about by such acquisitions.

To help mitigate this challenge, we recommend that CalRecycle consider adding the following provisions to the Proposed Regulations:

• **Transitional Exemptions:** Creation of a transitional exemption period for already obligated producers that acquire new businesses–particularly low volume entities that were previously exempt–during which exemption period the reporting requirements that apply to the obligated producer are phased in. This would allow producers time to integrate the acquired business, establish data collection systems, and begin reporting in accordance with regulatory standards.

• **Phased Reporting Requirements:** For acquisitions where historical data is unavailable, producers should be permitted to report supply data prospectively, beginning with the first full reporting period following acquisition. The PRO should not be allowed to require retroactive reporting when records do not exist, and producers should not be penalized for data gaps that are inherent to the acquisition process.

Overall, the operational reality of small-scale acquisitions by obligated producers underscores the need for flexibility in the Program's design, especially regarding data collection, phased compliance, and potential exemptions for newly acquired entities.

Response to B-35-7

CalRecycle rejects this comment as the requested changes for additional exemptions and requirements are beyond the scope of the Department's rulemaking authority, and both exceed and conflict with the statutory requirements for qualifying as a small producer. In addition to being outside the scope and in potential conflict with statutory requirements, no specific regulatory language is suggested, and an attempt to include language meant to universally apply to any specific entities' acquisition would be impracticable.

Comment B-35-8

CalRecycle Should Provide More Detailed Guidance on Eco-Modulated Fees (Section 18980.6.7)

Imperial appreciates the opportunity for producers to reduce their dues if they make eco-friendly packaging design choices. Imperial further applauds the decision in the Proposed Regulations to grant the PRO up to two years to gather appropriate data before implementing eco-modulated fees. However, the Proposed Regulations will still allow the PRO to implement eco-modulated fees at its sole discretion immediately after a PRO plan is approved. As a result, Imperial respectfully seeks clarification regarding *how* a producer must demonstrate that it qualifies for an ecomodulated fee adjustment. Imperial understands that the PRO will collect data regarding producers' covered packaging materials and apply eco-modulation adjustments after calculating base dues, but the methods by which a producer must provide evidence of meeting each benchmark is not clear in the current draft of the Proposed Regulations. How producers demonstrate compliance with the benchmarks impacts producers now, as they make packaging design choices in advance of paying their first producer dues, and especially as they make design choices to be implemented by the following round of producer

dues. Without clarification, producers will need to wait on any design changes which will harm the overall goals of the program.

Response to B-35-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. Because the PRO is given the responsibility and discretion to develop and establish eco-modulated fees under PRC section 42053, section 18980.6.7(c) appropriately extends the PRO the opportunity to determine when it has sufficient producer data to establish such eco-modulated fees. Therefore, section 18980.6.7(c) is consistent with the producer fee framework established in PRC section 42053 and no further change is necessary. While there is nothing preventing producers from seeking additional guidance or clarification from the PRO on the assessment of producer fees, further clarification as to the sufficiency of producer data is not necessary for the proposed regulations. See the response to comment B-13-12.

Comment B-35-9

CalRecycle Should Provide Operational Guidance on Producer Identification (Section 19890.1.1)

Imperial requests that CalRecycle provide operational guidance for determining the "first party to sell in the state" when the producer is neither the brand owner nor licensee. Section 19890.1.1 lacks clarity on how distributors should determine whether they are the responsible producer, particularly in complex supply chains with multiple intermediaries. The current language creates ambiguity about which entity bears compliance responsibility when products pass through multiple distributors before reaching retailers. Without clear criteria for establishing the sequence of distribution or specific thresholds for determining which entity is "first" to sell in California, distributors face significant uncertainty about their potential regulatory obligations.
CalRecycle should provide detailed operational guidance, including specific examples of common distribution scenarios and clear standards for documentation needed to demonstrate a distributor's position in the supply chain, ensuring that regulated entities can accurately determine their compliance obligations.

Thank you in advance for taking the time to review our comments and proposed solutions concerning these very important issues. We look forward to working with CalRecycle, and welcome any opportunities to discuss further and provide any additional assistance and insight.

Response to B-35-9

Comment rejected. The comment does not set forth proposed revisions to the proposed regulations. Rather, the commenter requests that CalRecycle publish separate "operational guidance" to assist distributors in understanding whether

they are "producers." No regulation is necessary for CalRecycle to publish documents providing such assistance. Moreover, section 18980.1(a)(17)(F) (defining "distribute") and section 18980.1.1(f) provide the clarity the commenter asserts is lacking: When Public Resources Code section 42041(w)(3) applies, the first person that distributes the covered material in California is the producer of that covered material, regardless of its downstream distributors.

B-36: WinCup, Inc. (Vicki O'Rourke)

Comment B-36-1

I am writing on behalf of WinCup, Inc. Thank you for the opportunity to review and comment on the revised SB 54 Permanent Regulations released on August 22, 2025.

Introduction to WinCup, Inc. and phade®

WinCup, Inc. is the creator and manufacturer of phade® products, a line of certified home and industrial compostable disposable food service products made with polyhydroxyalkanoate (PHA). Our phade® product line is the culmination of over 6 years of research and development, which is still ongoing, to make food service products from PHA because it is the most innovative and effective raw material available for such products. PHAs are the most biodegradable biopolymers available in the market today , as evidenced by eleven certifications for biodegradability in various environments by world renowned, independent third party certification bodies for our PHA resin and PHA based finished products.

In addition to their considerable environmental benefits, PHA based food service products fulfill the performance standards required by businesses and consumers today. This is critically important in California, a state with the largest economy in the U.S. Convenience and take out food and beverage options are not going away. The vision of SB 54 will only be truly successful if its goals are met while businesses and consumers in California still thrive. PHA based products perform better than paper alternatives but cost the same or less than those same paper alternatives, without PFAS or other harmful chemicals that can be released into our environment.

Last, PHA products are a biodegradable substitute for many of the most commonly littered types of products that would otherwise persist in our environment for decades.

Response to B-36-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-36-2
Article I Definitions

• Definition of "Significant Effect on the Environment"

We renew earlier comments to prior drafts of the Regulations to eliminate the phrase "or potentially substantial" from the definition of "Significant effect on the environment," as this phrase is vague and far too broad. In addition, in the context in which the defined term is used throughout the Regulations, the edited definition suggested below works adequately.

We recommend the definition read "Significant effect on the environment" means a substantial, ~~or potentially substantial,~~ adverse change in physical conditions, such as with respect to land, air, water, minerals, or animals, resulting from an operation, practice, product, substance, action, or any other cause. Mere disposal in a landfill does not constitute a significant effect on the environment.

Response to B-36-2

Comment rejected. The proposed change would inappropriately require any evaluation of potential effects to aim for a precise prediction of the severity of the effect. The regulation text must allow CalRecycle to exercise reasonable discretion and consider ranges of potential environmental effects in context of the relevant circumstances. Therefore, no further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment B-36-3
§18980.2.5(a) Covered Material Category List Updates

Subsection (a) provides that the required annual (and then bi-annual after 2032) updates to the CMC list are based on a calendar year, not the date of the most review or update. WinCup disagrees with this interpretation as it could allow for 24 months to elapse between updates (ex. an update in January 2026 with the next update in December 2027). In § 42061(e) of SB 54, the Legislature explicitly provided that "the department shall update the list at least annually." The plain meaning of an annual update is every 12 months, not every 15, 18 or 24 months. The food service ware and packaging industries are investing hundreds of millions of dollars in novel materials and products to comply with SB 54. Producers should not have to wait potentially up to 24 months to have a product that is newly recyclable or compostable added to the CMC list.

We request that annual updates be required at least every 12 months.

Response to B-36-3

CalRecycle rejects the comment. Contrary to the commenter's contention, the annual feature of an annual activity can have the common meaning of an activity

occurring once every calendar year, and not merely an activity occurring exactly 365 days after the previous instance. Given the ambiguity attendant in the statutory text, the proposed regulation establishes a process for considering whether to update the CMC list in a manner consistent with that text. That process, moreover, addresses the commenter's concern over insufficiently frequent updates. As explained in section 18980.2.5(f), CalRecycle will consider information submitted before April 1 for the purpose of considering updates to the CMC list during that year, and it will also consider information submitted after that date if the information is sufficiently limited so that it can be evaluated in time for updates during that year. Furthermore, regarding the possibility that producers might desire more frequent updates, CalRecycle is not restricted from revising the CMC list more frequently than the statutory minimum under the proposed regulations, and thus no change is required.

Comment B-36-4
§18980.3.3(c)(4) Documentation Requirements for Fiber Exemption

WinCup disagrees with the wholesale deletion of the requirement to obtain third party testing to validate that no plastics or polymers are intentionally included in products relying on the fiber exemption. This lack of oversight for fiber based products will lead to harmful results for Californians because of the complete lack of testing of these products. Fiber based products often include "polymers" for binding the paper and fiber together, and in inks, adhesives and dyes. In addition, since fiber products are not required to be certified compostable by any independent third party organization, they may contain PFAS or heavy metals and no one will know.

For these reasons, we urge the Department to require that all products be certified compostable regardless of substrate or material from which they are made. In regulations, the Department should consistently favor third party certified compostable products instead of favoring fiber based products (which are often mistakenly assumed to have no plastics or polymers) over certified compostable plastic products.

WinCup recommends that the previous testing requirement be restored, or in the alternative, that all products, regardless of substrate, be required to be certified by an independent third party before such products will be deemed to be compostable for purposes of the Act.

Response to B-36-4

Comment rejected. The commenter's proposal would effectively nullify the exemption in Public Resources Code section 42356.1(d) from the requirement that certain products must comply with an ASTM standard specification, a requirement per section 42357(a) that applies in combination with 42357(g)(1)(A) to impose a certification requirement. Even that certification requirement is not absolute; it only applies if CalRecycle has approved an independent certification body, and CalRecycle has no obligation to do so. Lastly, CalRecycle cannot directly regulate any food service ware that contains no plastic because such

items would not even be covered material. Taken together, these statutory provisions make clear that CalRecycle lacks the authority to impose the requested certification requirement on products exempt pursuant to Public Resources Code section 42356.1(d). See, also, CalRecycle's response to comment B-38-7.

Comment B-36-5
Article 4 - Responsible End Markets

§18980.4(a)(4)(B) and (C) Responsible End Market Criteria

WinCup disagrees with the distinctions made in subsections (a)(4)(B) and (C) between plastic and fiber products, and renews its previous concerns (from prior comment submissions) regarding the term "fully biologically decompose." This distinction ignores science and makes yet another arbitrary distinction between certified plastic compostable products, which are given less favorable treatment, and fiber/paper compostable products, which are given more favorable treatment. The process for and biological decomposition of compostable products in a commercial composting facility is the same, regardless of whether the product contains plastic or paper. In fact, plastic compostable products are known to biodegrade faster and more consistently in the process. When field testing compostable products to make sure they perform as required, Composters Manufacturers Alliance (CMA) uses PLA (not cellulose or paper/fiber) as the control sample in its tests because of its reliability in biodegrading quickly.

The use of the term "fully biologically decompose" in subparagraph (B) in contrast to the use of the term "biologically decompose" in subparagraph (C) is confusing and unrealistic. The term "fully biologically decompose" fails to recognize how a compost facility actual operates. All compost facilities have "overs." This heightened standard of "full biological decomposition" has no basis in science; biodegradation is a biological process that will have variability based on the many factors that affect biodegradation, including the character of the materials in each compost pile. In seeking some "perfect" biodegradation process standard for compostable plastics, the Department imposes additional burdens on compost facilities that are highly disproportionate to the end goals sought to be achieved. This new standard will discourage compost facilities from accepting compostable plastics; rather than serving the goal of bringing more products into the circulate economy of California. With this unnecessary distinction, the Department is putting up permanent road blocks and discouraging investment and innovation by producers of food service ware.

WinCup recommends that Responsible End Market requirements for compost facilities be uniform and consistent regardless of what products are being composted. The sole criteria imposed on compost facilities as "Responsible End Markets" should be to accept only certified compostable products to be processed in a manner consistent with the management of other feedstocks to produce a marketable product which complies

with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the
California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable.

Response to B-36-5

CalRecycle rejects this comment. See the responses to comments B-6-5, O-75-12, and O-83-5.

Comment B-36-6

Article 6: Requirements for the Producer Responsibility Organization

§18980.6.7 Eco-modulated Fee and Fee Schedule

WinCup disagrees with the revisions to §18980.6.7(a) and (b) to allow for up to a two year delay on the PRO's implementation of eco-modulation.

This two year delay has no basis in §42053 of the Act. Section §42053(b) allows the PRO to establish the fees schedules during the first two years of operation based on "estimated costs" of "implementing the plan, operating costs, the costs of completing the needs assessment, and the costs to reimburse the department." The Legislature did not authorize the PRO to ignore explicitly mandated eco-modulation for up to two years. This delay will significantly harm producers who have invested in technology to take advantage of eco-modulated credits to make better products for the state of California, depriving those producers of the ability to offer more competitive pricing for their better products that actually cost more to manufacture than competitors' run of the mill products without any of the recognized benefits delineated in §42053(e) of the Act. Two years is a very long time in the life cycle of a business, particularly when trying to grow a new or improved product category. This two year delay will be particularly burdensome for smaller producers trying to compete with larger producers. The effect of this two year delay is a very uneven playing field for producers in the state of California.

We recommend deletion of the two year delay language in §18980.6.7(a) and (b). As an alternative if the language is not deleted, then we recommend that the regulations mandate a credit and reconciliation to take eco-modulation for the first two years into account in the fee schedule imposed in year 3 of plan operation.

Response to B-36-6

CalRecycle rejects this comment. See the response to comment B-6-6. CalRecycle further rejects this comment to the extent it makes an alternative recommendation to mandate a credit and reconciliation in year 3 of plan operation. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(c) establishes

the relevant considerations that must be reflected in the producer fee schedule beginning in the third year of plan operation. Section 18980.6.7(b) of the proposed regulations implements this provision by specifying the requirements for the producer fee schedule. PRC section 42053(c) does not require any credits or reconciliation for past payment of fees pursuant to PRC section 42053(b), and CalRecycle declines to include such a requirement under section 18980.6.7. There is nothing in the Act or proposed regulations preventing a PRO from incorporating credits or reconciliation into its eco-modulated fees if it determines such credits or reconciliation are necessary or appropriate to comply with the requirements of the Act. Therefore, no change is necessary.

Comment B-36-7

§18980.6.7(i) Credit for Products that are Home Compostable

WinCup renews its earlier comments made to prior drafts of the Regulations for a credit to be issued for certified home compostable products that are also certified industrial compostable, recognizing the increased benefit within the State of California of such products in reducing their overall burden on the waste collection and recovery system since they can be recovered in backyard compost.

Article 6 – Eco-modulated Fee and Fee Schedule – Section 18980.6.7(i)

We recommend adding a new subsection (3) as follows:

(3) In addition, plastic covered materials that meet the requirements of Section 42357 of the Public Resources Code to be labeled as "home compostable," which are also eligible to be labeled as "compostable" under these Regulations, shall receive a further reduced fee.

Response to B-36-7

CalRecycle rejects this comment. Express provisions of statute preclude CalRecycle from creating a compliance pathway for material merely on the basis that they are home compostable. Statute makes no reference to home-compostable goods, and PRC section 42050(b) requires that covered materials be either recyclable or "eligible for being labeled 'compostable' in accordance with Chapter 5.7 (commencing with Section 42355)." The reference to "compostable," as a single word in quotation marks, without use of the term "home compostable," makes clear that the Legislature did not intend for material that merely satisfies the requirements to be lawfully labeled "home compostable" to comply with section 42050(b). In other words, the only basis for items that are compostable but not recyclable to comply with PRC section 42050(b) is to satisfy the requirements to lawfully be labeled "compostable." Therefore, there is no basis for specifically addressing "home compostable" goods in the definition of "compost" or otherwise.

Because the express provisions of the Act preclude CalRecycle from creating a

compliance pathway for materials merely on the basis that they are home compostable, similar reasoning suggests that the Legislature did not intend for the PRO to be required to award fee credits under PRC section 42053(e) for such products. Therefore, no change to section 18980.6.7(i) is necessary to the implementation or enforcement of the Act.

Comment B-36-8

Article 1: Approval of Certification Entities

WinCup renews its earlier comments made to prior drafts of the Regulations objecting to any ISO certification requirements for third-party certification entities. Nonetheless, if such a requirement is to be imposed, ISO/IEC 17065:2012 certification is not a commonplace requirement currently and certifying bodies will need time to come into compliance.

WinCup recommends that the requirements of §18981 only come into force from and after January 1, 2028, and that the Regulations explicitly provide that product certifications issued prior to such date that do not expire until after such date remain valid until their expiration date notwithstanding that they were issued by a certifying body that was not in compliance with §18981.

Thank you for the opportunity to submit these comments. We would be happy to respond to any questions or provide additional information.

Response to B-36-8

Comment rejected. The commenter's concern over the time required for certifying bodies to "come into compliance" is unfounded because, pursuant to Public Resources Code section 42357(g)(1)(A), the proposed regulation has no effect until one year after CalRecycle has approved a certifying body that has done so. In other words, the statute already delays the effective date of the certification requirement, so the commenter's proposed delay until an arbitrary date certain is unnecessary. CalRecycle also rejects the proposal that a certification issued before the effective date be considered sufficient regardless of who issued them and remain so until "their expiration date." That change would allow the absurd result that any certification, including one with an "expiration date" set unreasonably in the future, would be acceptable regardless of the certifier's qualifications. Even if the proposed change were not unreasonable on its face, it would be inappropriate because it solves a problem that Public Resources Code section 42357(g)(1)(A) overtly addresses to begin with: The Legislature clearly intended to address the commenter's concern by codifying a delay so that there will be at least one year after there is an approved certification entity before any product must be certified.

B-37: EcoSafe Zero Waste USA Inc. (Sammy Davies)

Comment B-37-1

1. EcoSafe's Role in Advancing a Sustainable Product Marketplace

EcoSafe Zero Waste Inc. is a North American manufacturer and advocate of certified compostable films and liners designed for food service and organics collection programs. Our mission is to make composting second nature by ensuring food scraps are captured cleanly and transformed into nutrient-rich soil instead of landfill methane. We actively align our product design, certifications, and advocacy with California legislation, including AB 1201, SB 1383, and now SB 54. Every EcoSafe product is BPI-certified to ASTM D6400 standards, PFAS-free, and accepted by the Compost Manufacturing Alliance (CMA) across all commercial compost facility types. We also work directly with haulers, municipalities, and composters to educate on contamination prevention and end-of-life verification, ensuring that policy translates into practical circular outcomes.

Response to B-37-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-37-2

a. Definition of "Polymer"

The absence of a clear "polymer" definition, as established in ASTM D883 and referenced in AB 1201, introduces ambiguity that risks allowing non-compostable, untested materials into the marketplace.

This omission threatens both soil health and the credibility of compostable product programs already operating across the state.

We recommend explicitly incorporating the ASTM D883 definition of "polymer" into SB 54 regulations to maintain consistency with existing law and to protect compost end markets.

Response to B-37-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment B-37-3

b. Responsible End Markets

SB 54's current draft distinguishes between plastic and paper/fiber compostable products, despite all materials being subject to the same ASTM standards and testing conditions.
This approach is inconsistent with AB 1201, which defines compostability through scientific performance metrics, not material origin.

By allowing certain fiber-based products to persist in compost while holding polymer-based ones to stricter criteria, the regulation undermines both the science and the integrity of "responsible end markets."

We recommend CalRecycle:

• Reference the latest ASTM test methods to evaluate actual facility conditions and performance outcomes.
• Address environmental risks associated with immature compost piles containing unprocessed or uncertified materials.
• Reinforce that responsibility lies in certification and disintegration performance, not in the raw material category.

Response to B-37-3

CalRecycle rejects this comment. See the responses to comments O-75-12, O-83-5, B-22-3, and B-6-5.

Comment B-37-4

c. Exemptions for Jurisdictions and Service Providers

We support exemptions only when demonstrated limitations such as economic, technical, or legal exist.

However, CalRecycle should require an RFP process before granting exemptions to confirm that funding from SB 54 could not reasonably overcome those limitations.

This transparency would clarify where investment in compost infrastructure is most needed and ensure SB 54 funds are directed toward actual system improvements rather than bypassing them.

Response to B-37-4

CalRecycle rejects this comment for the reasons provided in responses to comments B-14-5 and O-83-6.

Comment B-37-5

3. The Importance of Certified Compostable Bags for SB 54 Success

SB 54's success depends on the ability of local jurisdictions and residents to divert food scraps cleanly and conveniently.

Certified compostable liners are the critical link in that system. Without them:

• Contamination rates rise, discouraging composters from accepting organics.
• Haulers lose participation as odors, pests, and hygiene concerns increase.
• Compost quality declines, compromising soil integrity and market viability.

By contrast, certified compostable bags:

• Enable higher capture rates of food scraps at the source.
• Maintain cleaner bins and hauler trucks, improving operational efficiency.
• Protect worker safety and reduce methane emissions by ensuring organics reach compost, not landfill.

4. Real-World Context: Compostable Bags at Scale

Imagine the waste generated at a large stadium or university, tens of thousands of people eating, drinking, and tossing their leftovers into bins. At EcoSafe, we work directly with these high-traffic venues to implement successful food-scrap-collection programs. From front-of-house bins to back-of-house kitchens, certified compostable bags are a critical tool in making organics diversion possible at scale.

They keep bins clean, reduce handling mess, and most importantly, ensure that food waste can be collected without contaminating compost with microplastics from traditional plastic bags. It would never make sense to collect landfill-bound trash in a compostable bag so why are we still collecting compost-bound food waste in plastic bags that break down into harmful microplastics and render compost unusable?

If California is leading the way on organics diversion through SB 1383, then the solution must include tools that are fit for purpose and that means certified compostable bags, not plastic.

Neglecting to promote these proven tools would betray the spirit of SB 54, undermining California's climate and circular-economy goals. Compostable films, when certified, verified, and used responsibly, are not the problem; they are part of the solution.

4. Closing

EcoSafe stands ready to collaborate with CalRecycle, composters, and allied organizations to ensure that SB 54 implementation is consistent, science-based, and aligned with California's leadership in organics recovery.
By harmonizing SB 54 with AB 1201 and leveraging existing certification systems, California can advance a truly circular, transparent, and regenerative materials economy.

Response to B-37-5

Comment rejected. The commenter offers the nonspecific request that the proposed regulation "harmoniz[e] SB 54 with AB 1201." However, the proposed regulations properly apply the provisions of AB 1201, and the commenter does not explain the suggestion otherwise, and CalRecycle cannot discern any revision the commenter is proposing. Nor is the allegation that the proposed regulations fail to "promote" certain goods a legitimate objection; promoting goods—especially goods that are not covered material (plastic bin liners are not packaging and are thus irrelevant to the statute and CalRecycle's regulatory authority—is not the purpose of the proposed regulations pursuant to Public Resources Code section 42060. Lastly, to the extent the commenter understands the proposed regulations as governing how products may be labeled, the commenter is mistaken. CalRecycle determinations concerning compostability are for purposes of compliance with only SB 54 and will not purport to govern liability under the laws prohibiting deceptive labels. Those laws, while they provide the standards applied under SB 54, do not confer any enforcement authority on CalRecycle.

B-38: Geosphere LLC (Raegan Kelly)

Comment B-38-1

Thank you for the opportunity to provide comments on the draft regulatory language issued by CalRecycle. Our comments focus on the aspects covering compostable covered materials, including both home and industrial compostable products.

Geosphere LLC, operating under the trademark Better for All, manufactures a line of pure PHA party and event cups. PHA, or polyhydroxyalkanoates, are a type of biopolymer that can serve as an alternative to traditional fossil-based plastics for use in food ware and other single and limited use applications.

We chose to make cups from pure PHA for the following reasons: pure PHA is nontoxic, resilient, durable, high heat tolerant (won't melt in warehouses), and rapidly biodegradable in both home and commercial compost systems. After years of research and after initially offering products made from PLA (polylactic acid), we switched to PHA to address the persistent problem of plastic pollution evident on our land and in our waterways, and to INCREASE the end-of-life options for our commercial and residential customers. In other words, we perceived that commercially compostable products had a similar limit to recyclable plastics – a single method and destination that could guarantee successful diversion from landfill. By making cups from PHA, we were able to earn TUV Home Compostable certification as well as BPI Commercially Compostable certification. We in fact perceive home compostable certification as the superset of commercial compostable certification, as a dually certified compostable product has many more possible waste stream options, for example community composter, backyard composting, local municipal, and state.

We hope that you will consider the following revisions as you finalize the draft regulatory language and initiate a new regulatory process:

Response to B-38-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-38-2

§18980.6.7(i) Credit for Products that are Home Compostable

We ask that the regulations also incentivize home compostable products. Certified home compostable products present an important solution for managing packaging and waste at the local and individual level. We ask that the Department include a credit for packaging and products that are certified home compostable. A credit is justified for products that can be diverted into a backyard or community compost pile and are not an increased burden on the State to collect and manage. FURTHER, achieving home compostable certification takes time (6 plus months) and significant cost on the part of the the brand, per item and every year to maintain certification.

Geosphere LLC supports CJ Biomaterials' recommendation to add a new subsection (3) as follows:

(***3) In addition, plastic covered materials that meet the requirements of Section 42357 of the Public Resources Code to be labeled as "home compostable," which are also eligible to be labeled as "compostable" under these Regulations, shall receive a further reduced fee.***

Response to B-38-2

CalRecycle rejects this comment. See the response to comment B-36-7.

Comment B-38-3

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

The regulatory text proposed establishes a blanket exemption for reusable and refillable products. At the same time, the proposal removes all meaningful parameters around the definition and marketing of reusable and refillable products. PLEASE RECALL WHAT HAPPENED IN CA WHEN WE BUILT A LOOPHOLE FOR "REUSABLE" PLASTIC BAGS. The market was flooded with extra thick plastic bags printed with the word "reusable" but swapped in for single use shopping bags. These extra thick bags are still entering the market to this day and litter our streets and waterways.

As commendable as reusable systems are, a blanket exemption will allow for a host of bad actors to circumvent the program and legal requirements by claiming their product is reusable or refillable (see above example re bags). If these products are not included within the scope of covered materials, the PRO will be unable to gather data and have producers report on key metrics including production data, end of life disposal, and costs associated with their use. We ask the Department to include these products within the regulatory framework to manage the broader packaging ecosystem and ensure unintended consequences associated with shifting materials are avoided.

Response to B-38-3

CalRecycle rejects this comment, which proposes that reusable and refillable items be "within the regulatory framework to manage the broader packaging ecosystem and ensure unintended consequences associated with shifting materials are avoided." That proposal would contradict the very core of the statute: Items that satisfy the criteria in Public Resources Code section 42041(af) are not "covered material." In other words, the statute, not the proposed regulations, establish a "blanket exemption, with items that are not "covered material" necessarily outside the "regulatory framework." Regarding whether the proposed regulations must be revised to avoid the results described as "unintended consequences," see CalRecycle's response to comment B-6-2.

Comment B-38-4

§18980.2.5(a) Covered Material Category List Updates

SB 54 is designed to provide a pathway for products to be recycled or composted. To help establish this pathway, PRC 42061(d) directs CalRecycle to create a list of covered material categories that are deemed compostable. We appreciate the alignment of these determinations to the statutory eligibility to be labeled and sold in the state as 'compostable'.
We do not support the new language that reduces the frequency of these updates. The statutory language states that 'the department shall update the list at least annually'. We ask that the Department amend the regulatory text to provide for CMC list updates no less than once every 12 months.

Response to B-38-4

CalRecycle rejects this comment for the reasons stated in response to comment B-36-3.

Comment B-38-5

§18980.3.3(c)(4) Documentation Requirements for Fiber Exemption

Compostable covered products that contain no plastics or polymers can secure an exemption from third-party certification requirements for compostability. The previous

regulations appropriately established a series of requirements for these products seeking to obtain an exemption from third-party certification.
It is well known that fiber-based compostable packaging is likely to contain a variety of other materials beyond fiber. Geosphere in fact produced fiber-based bowls in 2023 and had to navigate the world of manufacturing these products to be "water and oil proof". The DEFAULT additive for oil proof fiber-based packaging and products is PFAS. And when you request alternatives or the omission of these chemicals, you are informed that any equipment that has run with PFAS is contaminated with PFAS. Finding manufacturers that have never run fiber based material with PFAS is difficult and the price premium is higher. You need to require certification so that fiber producers do not take shortcuts.

By undergoing third party certification and testing, we can ensure the safety and performance of these products.
We ask the Department to add back in the testing and ingredient disclosure requirements outlined in the previous regulatory draft.

Response to B-38-5

Comment rejected. The clear purpose of Public Resources Code section 42356.1(d) is to establish a less burdensome compliance pathway by not requiring certification to an ASTM specification, which would entail product testing. The proposed addition of a testing requirement in the proposed regulations would negate that effect, so that there would be no meaningful difference in the burdens placed on fiber-based products and those placed on other products. Regarding ingredient disclosure requirements, the proposed regulations require documentation of eligibility for the exemption and mandatory disclosure upon request by CalRecycle, which strikes the appropriate balance between requiring proof and the administrative burden on CalRecycle for enforcing the statute. Also, imposing a general, affirmative obligation to provide information to CalRecycle about plastic content would contradict statute with respect to allegedly compostable food service ware because food service ware that contains no plastic would not be covered material to begin with.

Comment B-38-6

§18980.6.7 Ecomodulated Fee and Fee Schedule

We request revision to §18980.6.7(a) and (b), allowing the PRO a two- year delay in implementing ecomodulated fees. Ecomodulated fees are an important mechanism to help new, more climate-friendly products become more cost competitive. They are a core principle behind EPR and help facilitate a shift to more sustainable products.

Response to B-38-6

CalRecycle rejects this comment. See the response to comment B-6-6.

Comment B-38-7

Home composting is appropriate for a small subset of products that are certified to break down in an ambient temperature home composting system. These products offer an important alternative for brands and consumers who want to ensure end-of-life management of their products.

Companies serving food will be especially constrained in meeting recycling targets under the new regulations. For producers of single use food ware (such as utensils, straws, plates, and cups), and in the case of film applications, compostability will be the primary means of compliance. To realize these ambitious targets, these companies need to be able to use all material typesm including home compostable products.

Limiting the end-of-life pathways for a home compostable product to industrial composting sites runs contrary to the ultimate objectives of SB 54, particularly while we are very early in efforts to build out industrial composting acceptance and infrastructure across the state. Home composting needs to be preserved as a pathway available to California consumers, communities and companies.

We ask the Department to reconsider their position and revise the regulations to effectively manage home compostable products.

Response to B-38-7

Comment rejected. The statute is unambiguous with respect to compostability: To comply with Public Resources Code section 42050(b), a single-use item must either be recyclable or meet the requirements for lawfully being labeled "compostable." Nowhere in the statute did the Legislature indicate that meeting the requirements for being lawfully labeled "home compostable" is sufficient, and, in any event, it would be impossible to implement the statutory reporting and responsible end market requirements for items that might be, but cannot be required to be, composted at home. A consumer and their home compost bin are not a "materials market" (see Public Resources Code section 42041(ad)) that can be incorporated into a producer responsibility plan.

B-39: GAF Materials, LLC (Joan Crowe)

Comment B-39-1

By this letter, GAF is submitting comments on California Senate Bill 54, “Plastic Pollution Prevention and Packaging Producer Responsibility Act” (the “Act”).

Founded in 1886, GAF is the largest roofing and waterproofing manufacturer in North America. With 30 manufacturing locations across the country, including California, GAF has approximately 5,000 employees and offers a range of products and services designed to meet the needs of both commercial and residential customers, protecting one out of every four homes in the U.S. Sustainability is a primary focus between

manufacturing reflective shingles, supporting the Cool Community project in Pacoima through use of the StreetBond solar-reflective pavement coatings, and driving energy efficiency and recycling across our plants. Our efforts include reducing energy usage, making our operations more sustainable, and addressing product and material circularity. GAF appreciates the opportunity to participate in the draft regulation process for SB 54.

The following comments are offered in response to the proposed regulation text of the Act issued on August 22, 2025.

Response to B-39-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment B-39-2

Article 3: Evaluations of Covered Material and Covered Material Categories, Section 18980.3. Recyclability (Reference Sections 42041, 42050, 42061)

Article 3 of the Act indicates that a covered material shall not be considered recycled before it has been accepted by a "responsible end market." Construction material manufacturers, including GAF, use packaging that may be recycled. However, there are no collection systems in place for construction sites. So, technically speaking, there is no end market for construction packaging materials.

Due to these circumstances, we looked at the possibility that building materials packaging may be excluded or exempt, but it does not appear that such packaging can meet the onerous requirements listed in Section 18980.2. Categorically Excluded Materials and Section 18980.2.3. Exemptions for Certain Covered Materials. One of the reasons it is so difficult to comply is because the parameters primarily address general consumer products instead of specifying residential consumer products, which appears to be the intent of the Act.

We request an exception or exemption for packaging used for construction materials because there is no program to pick up construction materials packaging for recycling in California. Accordingly, construction materials packaging – even if designed to be recyclable by construction materials manufacturers – cannot actually be recycled. Moreover, insofar as CalRecycle's goal is to keep packaging out of the residential/consumer waste stream, then any such exception or exemption would not jeopardize that goal because construction material waste does not enter the residential/consumer workstream.

Article 2: Covered Materials and Covered Materials Categories (Reference Sections 42050 and 42057)

Article 2 of the Act contains provisions that require recyclability of packaging and reduction of overall packaging weight and plastic content. First, Section 42050 contains provisions to achieve certain recycling rates for packaging. However, due to the limitations described above, this requirement cannot be met since there are no collection systems in place for construction material packaging. Accordingly, building materials manufacturers cannot practically comply with this Section.

Second, Section 42057 requires the PRO to achieve the 25-percent reduction by weight and 25-percent plastic component source reduction requirement for covered material.

From a cost perspective, manufacturers are already incentivized to use as little packaging material as possible while still ensuring adequate protection for the products from damage during shipping and handling. However, packaging durability is critical for building materials because of the rough environment in which they are stored, distributed and installed. A good example to illustrate this is asphalt shingles. This type of product is shipped in "bundles" which consist of a stack of asphalt shingles wrapped in a plastic film, weighing in excess of 60 lbs per bundle. Asphalt shingles are bulky and heavy. If the packaging is too weak, the wrapper may tear and cause the asphalt shingles to slide out, which can risk significant injuries to contractors or homeowners and increase landfill waste and contractor overhead – ultimately leading to injury risks, damaged products and higher prices for consumers. Another example is wooden pallets, which are a key component of transportation of our products. Pallets can be reused and are already part of a circular system within construction.

Using recycled content to achieve such a reduction is often not a viable option as it would impact durability of the product's packaging and cause safety hazards. We have been informed through our industry contacts that the recycled resin impacts several characteristics of the packaging including, but not limited to, durability and strength. As noted above, durability is of utmost importance when maintaining the integrity of our products. The sometimes harsh environment of storage, distribution and application needs to be considered when changing out the packaging.

Given that the primary focus of the SB 54 regulations is on general consumer products, GAF urges CalRecycle to determine that Construction & Demolition (C&D) waste and packaging for business-to-business products are beyond the scope of the regulations, or incorporate exemptions for these materials in the regulations. Such exemptions should also include wooden pallets.

In closing, GAF recognizes and values the efforts of CalRecycle, and appreciates the opportunity to submit a public comment.

Thank you again for the opportunity to provide comments.

Response to B-39-2

Comment rejected. The commenter requests that CalRecycle establish specific exemptions for construction packaging materials, construction and demolition

waste, packaging for business-to-business products, and wooden pallets. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

B-40: Recology (Julia Mangin)

Comment B-40-1

Thank you for the opportunity to comment on the Notice of Proposed Action – SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations, issued on August 22, 2025. I am writing on behalf of Recology, one of the state's leading recycling, composting, and waste collection companies.

Recology is a 100% employee-owned company with roots going back more than a century. We provide franchised curbside collection services in over 88 Northern California communities, from major metropolitan areas to rural regions, and we operate material recovery facilities and commercial composting sites across the state.

We have long partnered with cities and counties to meet California's ambitious recycling and organics diversion mandates under AB 939, AB 1826, AB 341, and SB 1383. In line with this mission, we applauded the passage of SB 54, which rightly shifts accountability for plastic waste and packaging from local governments, haulers, and ratepayers to the producers and retailers who introduce these materials into commerce.

We understand that the success of SB 54 depends on timely regulatory action to meet statutory deadlines. Accordingly, our comments are intentionally limited to essential changes to avoid prompting further rounds of comment. Our recommendations focus on ensuring the regulations provide clear definitions, protect existing solid waste collection programs and franchise agreements, safeguard end markets for compost, and prevent unintended penalty exposure for local jurisdictions and service providers.

Please feel free to contact me at jmangin@recology.com with any questions. We remain committed to working with CalRecycle and the Producer Responsibility Organization to ensure SB 54's successful and timely implementation.

Response to B-40-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the

issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-40-2

ARTICLE 1: Definitions

Section 18980.1(2) – Alternative Collection

CalRecycle's reasoning explains that the purpose of this subsection is to define "alternative collection" in contrast to the broader definition of "curbside collection" under the Act, and to ensure that no program conducted by or on behalf of local jurisdictions can be considered "alternative collection".

However, the regulatory text is problematic as written because it states that alternative collection cannot be conducted by a recycling or composting service provider under contract with a local jurisdiction. This language excludes contracted providers from offering alternative collection programs, even when those programs are not operated on behalf of a jurisdiction.

In addition, inclusion of the word "discarded" introduces unnecessary confusion by invoking concepts from solid waste law that CalRecycle has expressly said are not relevant to this definition. Removing this word will better align the text with the stated purpose of the subsection. We also note, consistent with comments submitted by the Resource Recovery Coalition of California, that use of "discarded" risks conflict with established case law and franchise frameworks that have underpinned local recycling systems for decades. Eliminating the term will provide clarity, protect the stability of franchise agreements, and ensure consistency with statutory intent and the Initial Statement of Reasons (ISOR).

Recommendation: Strike "because it is not conducted by a local jurisdiction or by a recycling or composting service provider under contract with a local jurisdiction" and remove the reference to "discarded" from the definition of "alternative collection". Clarify in the ISOR that recycling or composting service providers under contract with a local jurisdiction are not excluded from conducting alternative collection, so long as the program is not conducted on behalf of a local jurisdiction.

Revision Proposal: "Alternative collection" means a program that collects covered materials, regardless of the manner and location of collection, and is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code.

Response to B-40-2

Comment rejected. The definition of "alternative collection" is a straightforward extension of the unambiguous definition given in statute to "curbside collection" (Public Resources Code section 42041(g)). The latter definition establishes a clear dichotomy: The statute refers to all programs run by local jurisdictions or their recycling service providers as "curbside collection," so all other programs

must be "alternative collection." The proposed regulation's definition of "alternative collection" reflects that dichotomy and is provided for added clarity because the definition of "curbside collection" is broader than how that phrase is typically used. No further clarification of "alternative collection" is needed because the definition is unambiguous on its face and cannot reasonably be read in any other way, such as interpreting it to encompass any program not conducted by a local jurisdictions or under contract with one (i.e., those that are "curbside collection" under section 42041(g).

Regarding "discarded," merely using that word, with no reference or citation to laws from "solid waste law" either in the proposed regulations or the initial statement of reasons, does not "invok[e] concepts from solid waste law" and is not a pronouncement of rights under franchise agreements. That word has a plain meaning and, in the contexts in which it appears in the proposed regulations, clearly refers to the act of placing items into end-of-life management systems for recovery or disposal. Moreover, the definition of "alternative collection" appropriately reflects that, while "discard" has special meaning in the solid waste context with respect to what is considered "recycling," that meaning is not relevant under the statute implemented here. In solid waste law, the word "discard" has special meaning with respect to what is considered "recycling." But that meaning comes from Public Resources Code section 40180 and therefore does not apply under the statute implemented here, which has its own definition of "recycling" (section 42041(aa)). Unlike the one in section 40180, that definition conspicuously excludes the phrase in section 40180, "would otherwise become solid waste." By itself, that difference—a deliberate choice by the Legislature—makes clear that the "established case law" (presumably, Waste Management of the Desert Inc. v. Palm Springs Recycling Center, 7 Cal. 4th 478 (1992) and other cases on the same topic) to which the commenter refers is irrelevant to understanding the scope of what constitutes "recycling" under the statute.

Lastly, although unstated, this comment impliedly asserts that the definition of "alternative collection," rather than merely addressing the semantic issue of its meaning relative to "curbside collection," nullifies Public Resources Code section 42051.1(c)(3). That provision requires that producer responsibility plans set forth how they will supplement, rather than conflict with, existing services "in accordance with local solid waste handling requirements and the intent described in Section 4004, and how the PRO will leverage and utilize existing collection programs and . . . infrastructure." Nothing in the proposed regulations purports to excuse producer responsibility plans from that requirement.

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

Comment B-40-3

ARTICLE 4: Responsible End Markets

Section 18980.4.(a)(4)(B) – Responsible End Market Criteria

We strongly support the inclusion of the following requirement.

“Covered material partially or wholly comprising plastic and intentionally included in the process used to generate a recycled organic product must fully biologically decompose, and the recycled organic product must meet standards necessary to be sold into the marketplace.”

Consistent with CalRecycle’s reasoning, full biological decomposition is essential because plastic substances are not “recycled organic product.” Compost end markets depend on products free of plastic contamination, and any residual plastic undermines market stability and consumer confidence.

Recommendation: Retain this requirement in the final regulation to protect compost markets and ensure product integrity.

Response to B-40-3

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment B-40-4

ARTICLE 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Section 18980.11.1. – Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers

Subsection (d) requires recycling service providers to allow PROs and Independent Producers up to 90 days to review an exemption application (and 30 days for a renewal) before submitting to the Department. This requirement inadvertently exposes providers to penalties during the review period and may delay necessary filings.

Recommendation: Modify the process by allowing a local jurisdiction or recycling service provider to first submit a notification of intent to apply for an exemption or renewal to the Department. Following this notification, the notifier should proceed with the PRO review process. Clarify that while the PRO may object to the exemption or extension sought, their objection should not prohibit a recycling service provider or local jurisdiction from filing a request with the Department once the review period has ended.

ARTICLE 13: Enforcement Oversight by the Department and Administrative Civil Penalties

Section 18980.13. – Compliance Evaluation and Determination

Subsection (j) provides that no penalty may be imposed during the pendency of an extension or exemption request. However, as drafted, providers remain at risk of penalties during the PRO/producer review period before formal submission to CalRecycle.

Recommendation: Update subsection (j) to specify that no penalty may be imposed once a notification of intent has been submitted to the Department. This will align with the Article 11 recommendation and protect service providers from undue penalty exposure during the required review period.

Response to B-40-4

Regarding PRO objections to exemptions, nothing in the proposed regulations purports to give the PRO any authority to prevent submission of a request to CalRecycle. Accordingly, CalRecycle declines to make the requested change. Regarding section 18980.13(j) and the effect of the proposed "notification of intent" under 18980.11.1, local jurisdictions and recycling service providers are effectively given at least one-year notice of the need for an exemption because changes to the covered material categories list do not take effect for one year. That affords ample time for a local jurisdiction or recycling service provider to complete the process outlined in section 18980.11.1. Moreover, giving notices of intent the effect sought would contravene statute (Public Resources Code section 42060.5(b)), which states that extensions require a written showing that compliance with Public Resources Code section 42060.5(a) is not practicable. The suggested change would allow mere notification to CalRecycle to trigger the section 42060.5(b) exemption, effectively creating an end run around the written showing requirement.

B-41: Perkins Coie LLP (Jeffrey Hunter)

Comment B-41-1

Thank you for the opportunity to provide public comments on the latest draft of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) Permanent Regulations. We look forward to continued engagement with CalRecycle throughout the implementation of SB 54.

Perkins Coie LLP represents producers in various industries including retail, food, home and garden, paper products, electronic products, apparel, building materials and shipping packaging. Our clients have been evaluating their obligations under SB 54 and collecting data in anticipation of the upcoming reporting deadline but have faced challenges in determining how SB 54 will be implemented with respect to their products and business lines.

We are submitting these comments on behalf of our clients and request that CalRecycle take these comments into consideration in the final rules. Several of these comments are similar to comments we submitted during the prior comment period ending on June 2, 2025, as the latest draft of the regulations does not reflect these changes.

Response to B-41-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-41-2

A. Producer Identification

The proposed rules limit producers of covered materials to only producers that are subject to the jurisdiction of the California courts as described under proposed Section 18980.1. CalRecycle's proposed definition of "in the state" is too limiting and too confusing for retailers.

For example, under proposed Section 18980.1.1(d), only persons that are "in the state" and who manufacturer the food service ware and either own the designated brand or trademark or are licensed to manufacturer the food service ware would be considered the responsible producer. Many retailers and food service establishments in California purchase plastic single-use food service ware manufactured out of the state. Under the proposed Section 18980.1.1(f), retailers and food service establishments that use the food service ware manufactured outside of California could be considered the responsible producer simply by using the food service ware to package their food. We believe this is contrary to the intent of subdivision (w) of Section 42041 of the Public Resources Code.

The statute defines a producer to mean "a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state." PRC § 42041(w)(1). The statute does not require the producer to be subject to the jurisdiction of California courts. Further, other states that have adopted extended producer responsibility (EPR) packaging laws do not limit the definition of producer to only producers that are in the state or subject to the jurisdiction of the state's courts.

We request that CalRecycle revise its definition of producers who are "in the state" under the proposed Section 18980.1.1(a). As currently written, the definition of "in the state" is overly narrow and it may be difficult for retailers to determine whether their suppliers are subject to service of summons in California. We request that CalRecycle revise subsection 18980.1.1(a) as follows:
(a) For purposes of paragraphs (1), (2), and (3) of subdivision (w) of section 42041 of the Public Resources Code only, a person is in the state with respect to the Act if any of the following is true: (1) The person sells, offers for sale, distributes, or imports any covered material in or into California; or (2) The person consents to being considered in the state, being served notices and accusations by any means chosen by the Department pursuant to section 18980.13.3 and being personally subject to the

jurisdiction of California courts. To be considered in the state, such person must be registered as a producer pursuant to section 18980.10 and must, upon demand, confirm the foregoing consent in writing, such as by affidavit or written agreement, and through conduct consistent with such consent. Conduct consistent with such consent includes responding to an accusation, filing a pleading, or otherwise appearing in a legal proceeding in the state.

We also request that CalRecycle revise Section 18980.1.1(e)(1) as it could be interpreted as transferring producer responsibility to food retailers that use unbranded food service ware to contain and sell their goods. (1) If the covered material is food service ware, the brand or trademark directly associated with (as described in subparagraph (E) of paragraph (17) of subdivision (a) of section 18980.1) the food service ware shall be designated. A brand shall not be considered associated with food service ware solely by adding a price tag, sticker, or label to a container associated with another person's brand. Otherwise, the designated brand or trademark shall be the one owned or licensed by the manufacturer or licensee, provided that such person satisfies the requirements of paragraph (1) of subdivision (c) or paragraph (1) of subdivision (d) for being a producer of either food service ware or packaging.

Response to B-41-2

Comment rejected. The commenter objects to implementation of the "in the state" requirement, noting that "other states that have adopted [EPR] packaging laws do not limit the definition of producer to producers that are in the state or subject to the jurisdiction of the state's courts." That assertion is immaterial to application of California's law, which does include an "in the state" criterion. However, the commenter is incorrect that the definition of "producer" in the statute is limited to those in the state: Public Resources Code section 42041(w)(3) has no such limitation.

The commenter's objection to businesses being producers because they use "food service ware to package their food" is also baseless. First, that objection conflates "food service ware" and "packaging." Packaging used with any good is, by definition, a good's "packaging" under the statute, which unambiguously provides that a person selling or distributing that packaged good may be the packaging's producer (Public Resources Code section 42041(w)(3)). Assuming the commenter intended instead to refer to the use of items that are "food service ware," as described in section 18980.1(a)(8) of the proposed regulations, not "packaging," the commenter's assertion that such use, by itself, would render the user the "producer." Unless the business is the brand owner or licensee, section 18980.1.1(f) clearly establishes that the producer would be the first one to distribute or sell the product in the state. Thus, a business that acquires food service ware items in the state from any other business would not become a producer merely through that use. The business from which they acquired the items would be the producer.

The commenter's proposed revision to section 18980.1.1(a) would be inappropriate for multiple reasons. First, it ignores the intent, reflected in the tiered definition in Public Resources Code section 42041(w)(1) through (3), to

ensure that the person held responsible for compliance with the statute can be haled into a California court so that the court can render enforceable judgments against that person. The commenter's suggestion that producers need not "be subject to the jurisdiction of California courts" would defy the core tenets of "extended producer responsibility" (EPR) laws generally and this statute specifically: EPR laws purport to hold entities responsible in California for the effects they cause here, and this statute envisions CalRecycle enforcing the law via administrative proceedings in the state.

Second, contrary to the commenter's stated aim, the proposed change would result in the "in the state" requirement being far narrower in a way inconsistent with the structure of paragraphs (1) through (3) of section 42041(w). Only paragraph (3) concerns actual sales or distribution of products. Instead, paragraphs (1) and (2) identify brand owners and licensees as "producers," but only if they are in the state. In other words, the difference between those two paragraphs and paragraph (3) highlights the Legislature's deliberate choice to ensure that entities can be producers without having any role in the sale or distribution of the covered material in the state. While paragraph (1) refers to manufacturing, neither it nor paragraph (2) mentions any other element of the supply chain; paragraph (2) makes unambiguous that participation in any part of the supply chain is not necessary for one to be a producer. The commenter's proposal would take the opposite approach and would result in brand owners not being "in the state," and thus not "producers," if they do not sell, distribute, or import products using covered materials. That is not a mere theoretical possibility; entities owning brands often do not directly participate in the supply chain and may not perform any physical acts at all (i.e., they may be holding companies or out-of-state sibling companies of an in-state company).

Third, the commenter's approach would make the three-tiered structure of paragraphs (1) through (3) unnecessary. Only paragraphs (1) and (2) require the producer to be in the state. However, the commenter's proposed text would, in effect, limit those paragraphs by importing the criterion in paragraph (3) into them: One could only be a producer under paragraph (1) or (2) if they conducted the activities described in paragraph (3). That result would leave no effective difference between paragraphs (2) and (3) and thus could not have been intended.

Regarding the sentence proposed to be added after the first sentence of section 18980.1.1(e)(1), CalRecycle rejects the proposal because it is unnecessary and would have no effect. Section 18980.1.1(d)(1) clearly precludes the addition of a tag, sticker, or label from being relevant: The designated brand or trademark must be one "used with the food service ware when they are first sold or distributed or used with such initial sale or distribution, regardless of where such use occurs." Adding a price tag, sticker, or label to a container already associated with another person's brand necessarily does not occur when the food service ware was first sold or distributed.

Comment B-41-3

B. Exclusion for Branded Food Service Ware Sold Empty

CalRecycle should clarify under the proposed definition of “food service ware” that wraps, wrappers and bags that are sold empty at retail that are not primarily intended for the packaging of food by a commercial food service establishment are not included in definition of food service ware under the proposed Section 18980.1(a)(8)(B).

PRC section 42041(e)(1)(B)(ii) specifies that only “Wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments” are covered materials. However, Section 18980.1(a)(8)(B) could be read to imply that any wraps or wrappers that are “marketed, designed, or intended” to be used for the packaging of food for sale by food service establishments are covered materials even if they are sold to residential consumers or to businesses that are not food service establishments. Many companies that manufacturer wraps, wrappers and food service bags often market their products “heavy duty” or “commercial grade” even though the vast majority of the products are sold to residential consumers. Only those products that are actually sold to food service establishments should be covered under PRC section 42041(e)(1)(B)(ii).

In order to ensure that consumer products are not unnecessarily reported we suggest including the following new Section 18980.1(a)(8)(B)(iv): (iv) Wraps or wrappers and empty bags sold at retail or through internet transaction to individual consumers are excluded from the definition of “food service ware.”

Response to B-41-3

Comment rejected. The Legislature could not have intended for the status of items as covered material to be impossible to determine, if ever, until it is too late for it to be accounted for. That would be the outcome if whether items are covered material could vary based on whether individual consumers ultimately purchase them. Instead, the proposed regulations require items to be inherently covered material or not based on whether they are "marketed, designed, or intended to be used" in the manner described in statute. That rule presents a factual question about items themselves, not about what might happen with them in the future, and a framework within which manufacturers can readily establish their products as covered material or not covered material.

Comment B-41-4

C. Source Reduction

SB 54 requires that producers who are members of the producer responsibility organization (PRO) submit individual source reduction plans that include:
(1) any amount of covered material, by number of plastic components and weight of covered material, the producer source reduced since January 1, 2013; and
(2) the amount of covered material, by number of plastic components and weight of covered material, the producer plans to source reduce by January 1, 2027, January 1, 2030 and January 1, 2032.

PRC section 42057(d). Under PRC section 42057(a)(1), the PRO must develop and implement a plan by January 1, 2032 to achieve a 25 percent reduction by weight and 25 percent by plastics component source reduction for covered material sold, offered for sale, or distributed in the state. There are also interim source reduction requirements by January 1, 2027 and January 1, 2030. PRC 42057(a)(2)(C) and (D).

The proposed regulations still do not provide sufficient clarity on the information the producers must provide to the PRO in their individual source reduction plans or how the PRO can demonstrate that it is meeting the source reduction requirements.

CalRecycle needs to consider the feasibility of the source reduction targets and provide producers and the PRO with essential information needed to comply with SB 54's obligations. In particular, we are asking for CalRecycle to: (1) consider the impacts of source reduction requirements on growing businesses and modify targets accordingly; (2) provide the PRO and producers greater flexibility in meeting the 2032 source reduction goals, especially with respect to refillable or reusable plastic packaging and clarify that the shift to refillable or reusable packaging is not a requirement for every producer; (3) allow producers to provide estimates for source reductions since 2013; (4) clarify how producers will receive "credit" for past source reduction efforts; and (5) provide credits for producers who transition to materials that are currently less likely to be recycled but for which recycling infrastructure is being developed.

(i) Source Reduction Targets

The statute and current regulations suggest that the source reduction requirements are absolute, meaning that a specified quantity of plastic covered materials will need to be reduced based on the 2023 baseline for all covered producers regardless of the state's or a producer's economic growth. The Legislature recognized the need to allow businesses to grow following the last source reduction goal in 2032, PRC § 42057(h), but the statute and regulations fail to acknowledge the fact that businesses and the economy will continue to grow between now and 2032.

An absolute source reduction target will make it extremely difficult for covered producers of all sizes to build their businesses in California and serve growing communities. Under the current source reduction requirements, covered producers will need to not only rework the packaging for the items that they currently sell, which could take years, but will also be required to put a pause on expanding their offerings unless they are able to avoid the use of plastic covered materials. These absolute source reduction numbers may cause businesses to restrict the amount of products they sell in or into California or even pull out of California altogether.

While we recognize that the statute requires source reduction, the regulations should allow the producers and the PRO to account for producer growth and market conditions when determining compliance with the source reduction requirements. One way to do this would be to implement intensity-based source reduction requirements rather than absolute reduction requirements. For example, a covered producer could propose to

reduce the amount of plastics and plastic components in a particular packaging on an intensity basis. This would allow the covered producers and the PRO to meet SB 54's goals without limiting growth.

(ii) Refillable or Reuseable Source Reduction Goals

PRC section 42057(a)(2) states that "[a]t least 10 percent of plastic covered material sold, offered for sale, or distributed in the state shall be source reduced through shifting a plastic covered material to refillable or reusable packaging or food service ware or through eliminating a plastic comment." (emphasis added).

CalRecycle should clarify that this is an overall goal and not a requirement for **each member producer** of the PRO. For member producers that manufacturer a single item or a few items, it may be impracticable for the producer to switch to refillable or reusable packaging. For example, producers that manufacturer kitty litter or pet food sold at retail would need to create refillable packaging, deliver their product in bulk to the retailer, and coordinate with the retailer to store the product and maintain a mechanism to provide the product to customers. For every item sold or potentially sold in plastic packaging, this is not feasible or practicable.

Similarly, it is not feasible or practicable for retailers that provide fresh and prepared food through on site bakeries, service delis, meat departments, and/or produce departments to have refillable or reusable plastic packaging. In addition, the used packaging could be unsanitary especially for meat, dairy, and produce products. Retailers could potentially face liability for refilling used packaging. It is also unrealistic to assume that consumers will properly sanitize the packaging, keep the packaging, and then bring the packaging back to the retailer to purchase the same item. CalRecycle needs to provide greater flexibility to the PRO and member producers in meeting the 25 percent plastic reduction target. Individual producers should have the flexibility to use any of the mechanisms enumerated under PRC section 42057(d) or alternative mechanisms approved by CalRecycle.

(iii) Estimates for Past Source Reduction

We appreciate that PRC section 42057(f)(1) allows the PRO to consider and give credit for producers' past source reduction efforts starting in 2013. However, our clients are concerned that the significant efforts they have undergone to reduce the amount of plastic covered materials used since 2013 will go unaccounted for because they have not kept detailed records about the weight of covered materials and plastic components that have been source reduced over the past 12 years.

The regulations should clarify that producers will be able to obtain credit for source reductions of covered material since 2013 based on reasonable estimates to account for these past efforts. In addition, CalRecycle should specify the types of data needed to show past source reduction efforts. For example, if the producer can reasonably show a

packaging now contains a percentage of postconsumer recycled content, then the PRO and CalRecycle must provide the producer a credit for that percentage.

(iv) Credit for Past Source Reduction

The regulations provide little detail on how producers are given credit for past source reduction efforts. In addition to reduced fees, producers should be given credit towards their future source reduction targets consistent with PRC section 42057(d). For example, a producer who has reduced plastic or plastic components by 10 percent or more since 2013, should have no additional obligation to submit a plan to further source reduce by January 1, 2027, January 1, 2030, or January 1, 2032, as applicable. The requirement to submit source reduction plans should be on covered producers who have not previously implemented the source reduction efforts under PRC section 42057(d)(2).

(v) Plastic Reduction Credits

Producers should be able to obtain plastic source reduction credits for (1) transitioning to lighter weight plastic materials for which recycling is currently under development and (2) switching to postconsumer recycled content.

Many companies are looking to reduce the weight of their plastic packaging by transitioning from rigid plastic containers to flexible plastic bags. However, the statute's definition of "source reduction" excludes "[r]eplacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted." Thus, it is unclear whether this method of source reduction would qualify, as there is less availability for recycling flexible plastics than rigid plastics. PRC § 42040(aj).

Given the long lead time for the development of recycling infrastructure, the regulations should provide a credit for producers who achieve source reduction by replacing recyclable packaging materials with materials for which recycling infrastructure is currently being developed, as long as the PRO is providing for recycling of that material under its plan. This credit would be consistent with the requirement for CalRecycle to approve source reduction credits for producers that switch to postconsumer recycled content (which is similarly not considered to be "source reduction") and meet the required criteria for an alternative compliance formula. PRC § 42057(a)(2)(B); section 18980.3.4.

Response to B-41-4

CalRecycle rejects this comment for the reasons stated in response to comment O-96-17, O-104-18, and O-101-6. As discussed throughout said comments, the source reduction reporting and compliance is already established in section 42057 of the PRC which addressed baseline-based reduction requirements. Further, the proposed regulations already allow for reasonable, documented methodologies to estimate past reductions, but exemptions or credits beyond

those authorized by statute exceed CalRecycle's current interpretation of its statutory authority. See also the statutory definition of "source reduction" in section 42041(aj) of the PRC which would exclude replacing a recyclable or compostable covered material with a nonrecyclable or non-compostable covered material or a covered material that is less likely to be recycled or composted. Finally, as indicated in statute, including section 42057(a)(2) of the PRC, refillable/reusable packaging requirement applies in the aggregate at the PRO level, not to each producer individually, and the regulations are structured accordingly to comply with and achieve statutory goals, including CalRecycle's discretion over the plans and approaches for allocating and documenting source reduction strategies and their practical implication (section 18980.9.1 and section 18981.3 of the proposed regulations) without exceeding CalRecycle's statutory authority. As such, CalRecycle rejects this comment. For further detail, in addition to the aforementioned comment responses that address these issues, please see also O-41-4, O-89-2, and O-48-5.

Comment B-41-5

D. Producer Annual Environmental Mitigation Fees

The new subsection (c) under Section 18980.6.7 should be deleted. The proposed revisions to subsection (b) clarify that the PRO can charge fees two years following approval of the PRO's plan. Adding subsection (c) creates ambiguity as to when the PRO can charge fees. The producers need certainty as to when the annual fee payments will commence.

Section 18980.6.7(g) describes how the PRO will develop a formula and calculate each participant's market share and corresponding environmental mitigation surcharge assessment. As proposed, the formula is based solely on the number of plastic components and weight of plastic covered material a producer offers for sale, distributes, or imports in or into the state without taking into consideration the type of plastic, recyclability or the source reduction efforts implemented by a producer. A producer whose plastic covered material is more recyclable, contains postconsumer recycled content or the producer has implemented other eco-modulation efforts should not have the same share as another producer whose plastic is less recyclable, contains no postconsumer recycled content or has implemented no additional eco-modulation. The formula should not be based strictly on the number of plastic components and the total weight of plastic covered material. We request that CalRecycle revise the second sentence of proposed Section 18980.6.7(g) as follows:

Pursuant to section 42064(f) of the Public Resources Code, the formula shall be based on the number of plastic components and weight of plastic covered material a producer offers for sale, sells, distributes, or imports in or into the state taking into consideration the type of plastic, the recyclability of the plastic, the postconsumer recycled content and other eco-modulation efforts implemented by the producer.

Response to B-41-5

CalRecycle rejects this comment. To the extent this comment recommends deletion of section 18980.6.7(c), see the response to comment B-13-12. CalRecycle further rejects this comment to the extent it recommends revising section 18980.6.7(g) to reflect the type of plastic, recyclability, and source reduction efforts implemented by a producer in the calculation of the environmental mitigation surcharge assessment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42053, 42060, and 42064, and no change is necessary to the implementation of the Act. PRC section 42064(f) requires a PRO to establish and impose on its participants who produce plastic covered material an environmental mitigation surcharge, accounting for both number of plastic components and weight. PRC section 42064(f) does not allow for the consideration of factors outside the number of plastic components and weight of plastic covered material, nor does it suggest that any such consideration was contemplated by the legislature. CalRecycle declines to expand the express intent of PRC section 42064(f) to include considerations that are already adequately addressed elsewhere in the Act. Therefore, no further change is necessary.

Comment B-41-6

E. Producer Supply Data

Section 18980.5(d) states that producers that apply to become a participant of an approved PRO "shall, at the time of its application, submit to the PRO the producer's supply data for **calendar year 2023**." Given the delay in the adoption of the regulations, CalRecycle should provide some flexibility to covered producers and allow covered producers to submit estimates of "supply data" for calendar year 2023. Covered producers may not have tracked all of the information required under Section 18980.10.2. CalRecycle should clarify that a covered producer may not have all of the information and allow covered producers to provide estimates if actual data is not available. As revised, Section 18980.5(d) should read:

(d) Each producer that applies to become a participant of an approved PRO pursuant to subdivision (b) of this section shall, at the time of its application, submit to the PRO that producer's supply data for calendar year 2023 **and may provide estimates if actual data is not available**. For purposes of this subdivision, "supply data" means the information described in section 18980.10.2.

Response to B-41-6

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1.

Comment B-41-7

F. Covered Materials Recycled or Disposed Out-of-State

Section 18980.2(a) should include a new subsection specifying that covered materials recycled or disposed of outside of California are not covered materials under SB 54. The preamble to SB 54 does not indicate an intent to regulate covered material disposed of outside of California or use funds to support activities outside the state. CalRecycle has no jurisdiction over recycling or disposal activities in other states. Further, other states, such as Oregon, include an explicit carve out for covered materials disposed of or recycled outside the state. See ORS 459A.863(6)(b)(J).

The new Section 18980.2(a)(7) should read:

(7) Any covered material that is not ultimately discarded, recycled, or composted inside this state, whether for purposes of recovery or disposal.

Response to B-41-7

Comment rejected. The proposed addition is inappropriate because it would define "covered material" based on items' locations. Merely defining items outside California as "covered material" does not mean that CalRecycle would exercise "jurisdiction over recycling or disposal activities in other states." To the extent the proposed regulations purport to impose restrictions or burdens beyond those CalRecycle's is authorized to impose, the proper solution would be to revise the provisions that do so—the commenter does not identify any—not change the meaning of the basic phrase that is shorthand for "single-use packaging" and "plastic single-use food service ware." For example, distributing covered material in the state results in a person being a "producer," but the proposed regulations appropriately clarify that products that do not reach the end of their supply chain in California will not be considered "distributed" here. See section 18980.1(a)(17)(F).

Comment B-41-8

G. Recyclability

The regulations should include further information about the recycling standards and practices CalRecycle will follow when determining whether a covered material is considered “recyclable” or “compostable” pursuant to Public Resources Code section 42050(b). As currently drafted, the regulations only state that the covered materials must “be within one of the covered material categories on the list maintained by the Department pursuant to subdivisions (c) and (e) of section 42061 of the Public Resources Code, satisfy the additional criteria listed in paragraph (3) of subdivision (d) of section 42355.51 of the Public Resources Code,” and for food service packaging, satisfy the requirements of California Code of Regulations Sections 17989.2(a)(1) and (3). The statutes referenced in Section 18980.3 of the proposed regulations do not address additional considerations that may impact the recyclability of the covered material such as cardboard repulpability standards and materials that may not become recyclable after being used to contain certain chemicals. At a minimum, CalRecycle should adopt the standards published by the American Forest and Paper Association and the Fibre Box Association.

Response to B-41-8

Comment rejected. The commenter offers the vague proposal that the regulations "address additional considerations that may impact the recyclability of covered materials. However, the statute is clear that Public Resources Code section 42355.51(d) sets forth the conditions that are both necessary and sufficient for establishing recyclability. Moreover, the proposed regulations already accommodate the commenter's concern by interpreting section 42355.51(d)(3)(B) as incorporating the APR design guide's provisions for components that render materials "non-recyclable" or "requires test results." The commenter's suggestion that the proposed regulations adopt standards published by certain industry associations is somewhat more specific, but the commenter neither presents the standards proposed for incorporation into the regulations nor explains why they would be sufficient. CalRecycle cannot evaluate the commenter's basis for proposing such standards and declines to incorporate them.

Comment B-41-9

H. Conclusion

Thank you for the opportunity to comment on the SB 54 Proposed Regulations, and we appreciate CalRecycle's consideration of these comments. We look forward to continuing to work with CalRecycle to address these issues.

Response to B-41-9

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-42: WM (Christine Wolfe)

Comment B-42-1

Waste Management of California, Inc. and its affiliates ("WM") appreciates the opportunity to provide comments on the August 19, 2025 Draft SB 54 Regulations.

Section 18980.1(a)(2) Alternative Collection

The definition should read as follows:

"Alternative collection ***system***" means a ~~program~~ ***system*** that collects covered materials~~, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection, and~~ ***that*** is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code,

because it is not conducted by ***or on behalf*** of a local jurisdiction ~~or recycling or composting service provider under contract with a local jurisdiction~~.

This definition, by including the clause "regardless of whether the covered material is discarded or considered solid waste," suggests that the alternative collection system can collect materials clearly included in existing franchise agreements. This is a fundamental flaw for three reasons:
1) Charging customers or paying non-franchise entities for alternative collection that occurs at the curb directly contradicts Public Resources Code (PRC) Sections 42051.1(b)(3), 42051.1(c)(3) and (4), 42051.1(i)(2) and (3)(A), 42051.1(k), 42051.1(l), 42067(e)(4) and (5)(A), in that doing so **would violate existing franchise agreements and conflict with, be disruptive of, and adversely affect the performance of the solid waste network providing services in accordance with local solid waste handling requirements** and the intent described in PRC Section 40004. This is expressly prohibited by the Act.
2) It is counter to the intent and spirit of SB 54 for a PRO to charge individual consumers and businesses directly for service. The Act and the Department's draft regulations themselves make clear that the PRO is required to pay for new and additional costs incurred specifically due to the Act, funded by fees assessed on individual producers, not, as the proposed regulatory definition would suggest, by individual consumers and businesses generating recyclables paying for an "alternative collection system." We believe this is contrary to the Department's intent and the Act.
3) The types of programs that would qualify as alternative collection systems pursuant to the Act are a) business-to-business transactions where the generator is ***selling or donating, not paying for or being charged for***, collection of covered materials, or b) mail-back or drop-off retail programs that are either free to the generator or where some incentive is provided by a producer ***to*** the generator. These pathways contemplate scenarios where the material is **not discarded** and so does **not become solid waste**. As such, the clause related to discarding in the regulatory definition is not necessary.

The proposed changes to the definition would be consistent with the Act's express purpose to leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure.

Likewise, the Regulations must make clear that alternative collection systems are required to meet the same requirements as local jurisdictions and recycling service providers with respect to reporting, transparency, transfer to responsible end markets, and that alternative collection systems are subject to the same penalties as local jurisdictions and recycling service providers for non-compliance.

Response to B-42-1

CalRecycle rejects this comment for the reasons stated in response to comment B-40-2. Also, the commenter's analysis of the concept of "alternative collection" erroneously incorporates concepts from solid waste law and related case law. The commenter asserts that "alternative collection systems" are limited to "material [that] is not discarded and so does not become solid waste." That

analysis appears to rest on case law addressing the definition of "recycling" under Public Resources Code section 40180. That definition, as explained in response to comment B-40-2, is irrelevant. The commenter also objects to the PRO "charg[ing] individual consumers and businesses directly for service." The proposed regulations, however, do not imply that any program can require consumers and businesses to incur costs or, because it falls within the definition of "alternative collection," nullify a PRO's obligation to cover additional costs described in Public Resources Code section 42051.1(g)(1), which refers to costs "incurred by local jurisdictions, recycling service providers, alternative collection systems, and others."
Regarding reporting, transparency, and transfer to responsible end markets, the commenter points to no statutory basis for the claim that the regulations must impose the same requirements on alternative collection systems as the statutory requirements placed on local jurisdictions and recycling service providers. The commenter does not identify the reporting and transparency requirements the statute or proposed regulations allegedly place on local jurisdictions and recycling service providers, and nothing in the proposed regulations purport to exclude alternative collection programs from the limitation, stated in Public Resources Code section 42041(aa)(3), that materials must be sent to responsible end markets to be considered "recycled."

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

Comment B-42-2

Section 18980.4(a)(4)(B) Responsible end market standards for compostable packaging and food serviceware

The strong standards for REMs for compostable plastics listed in this section are necessary to ensure the PRO Plan does not propose investments that would disrupt or adversely affect the performance of the solid waste network providing services in accordance with local solid waste handling requirements. In this case, the pertinent solid waste handling requirements are the organics collection and processing services required of local governments under CalRecycle’s SB 1383 regulations.

Response to B-42-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment B-42-3

Section 18980.11(c) Local Jurisdiction and Recycling Service Provider Exemptions and Extensions

The Regulations note that the requirements of subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect with respect to the additions to the CMC list

until the Department decides whether to grant or deny an extension or exemption request from a local jurisdiction or recycling service provider. The ISOR explains that this requirement is “necessary to ensure that the statutory exemption or extension serves its express purpose of preventing imposition of additional obligations caused by the change to the CMC list that are impossible to fulfill.”1 The Regulations also establish in 18980.11.1 a process a local jurisdiction or recycling service provider must follow as part of preparing an application for CalRecycle’s review. The proposed process is described in the ISOR as necessary to ensure adequate notice to stakeholders and allow for discussions between local governments, recycling service providers, and the PRO/independent producers.

To align these two sections, the Regulations should clarify that a local jurisdiction or recycling service provider shall notify CalRecycle of its intent to file for an extension or exemption, at which time the requirements of subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect until the Department decides whether to grant or deny an extension or exemption request. This clarification will ensure that the consultation process with the PRO required in Section 18980.11.1(d) serves its intended purpose.

We note the Act uses the term “practicable,”2 not possible, as the ISOR would suggest at page 252. The ISOR correctly assesses the framework of practicability on page 254 pertaining to Section 18980.11.1(c)(4).

Thank you for consideration of our comments.

Response to B-42-3

Comment rejected. Subdivision (b) of PRC section 42060.5 expressly requires CalRecycle to grant extensions upon a written showing by a local jurisdiction or recycling service provider that compliance with section 42060.5(a) is not practicable. The suggested change to the regulations would contravene that provision by effectively exempting local jurisdictions and recycling service providers from section 42060.5(a) before that written showing has been submitted. Moreover, section 18980.11(c) guarantees a one-year delay before changes in the covered material list results in new obligations for local jurisdictions and recycling service providers. That one-year period provides ample time for providing the advance notice and consultation process required by section 18980.11.1(d) before submission of the application to CalRecycle.

Regarding the term "practicable," even if CalRecycle were required to respond to recommended changes to the Initial Statement of Reasons (as opposed to recommend changes to the proposed regulations), no change would be necessary because that term is a synonym of "possible." According to the Merriam-Webster dictionary, "practicable" means "capable of being put into practice or of being done or accomplished." The commenter may erroneously conflate "practicable" with "practical." The Initial Statement of Reasons used the word "possible" to avoid that incorrect understanding of the word "practicable."

B-43: Mighty Petz Inc. (Pawel Krol)

Comment B-43-1

I would appreciate if there were clear guidelines on where/how small businesses can apply for exemption. At the moment, I have not been able to find such information readily available.

Response to B-43-1

CalRecycle rejects this comment. Section 18980.5.2 establishes clear requirements for a small business seeking an exemption from the Act's requirements pursuant to paragraph (5) of subdivision (a) of section 42060 of the Public Resources Code. Therefore, the recommended change is not necessary to the implementation or enforcement of the Act.

B-44: Cedarwood-Young Company DBA Allan Company (Nenad Trifunovic)

Comment B-44-1

Dear Csilla Richmond:
This letter is submitted on behalf of Allan Company in response to the request for comments to the interpretation and implementation of Senate Bill 54 (Stats. 2022, ch. 75),
the Plastic Pollution Prevention and Packaging Producer Responsibility Act ("**SB 54**"). Allan Company appreciates the opportunity to provide comments on the updated proposed Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations (the "**Proposed Regulations**").
As one of the largest privately held, independent recycling companies on the West Coast, Allan Company has been family-owned and operated since its founding in 1963 in Baldwin Park, California. Allan Company specializes in acquiring, processing, and marketing valuable recyclable materials, including paper, plastic, metal, and glass.
We appreciate CalRecycle's commitment to a transparent and collaborative rulemaking process. Given the complexity and far-reaching implications of this regulatory framework, Allan Company respectfully submits the following comments.

Response to B-44-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-44-2

Background

The Department of Resources Recycling and Recovery, commonly known as CalRecycle, is established1 and authorized in its waste management powers by the California Integrated Waste Management Act of 19892 ("**CIWMA**") found in Division 30 of the Public Resources Code.

The stated purpose of the CIWMA is expressed in Division 30 as follows:

The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, *and to specify the responsibilities of local governments to develop and implement integrated waste management programs.*

Cal. Pub. Res. Code § 40052 (emphasis added)

SB 54 furthers that stated purpose. It is codified as Chapter 3 (Plastic Pollution Prevention and Packaging Producer Responsibility Act), within Part 3 (State Programs) of Division 30 (Waste Management).

To achieve its aims, SB 54 creates an extended producer responsibility ("EPR") program to manage covered material consisting of specified plastic single-use food service ware and single-use packaging of one or more material types, including plastic and paper. Generally, producers are charged with ensuring that covered material "sold, offered for sale, or distributed in the state"3 is recyclable or compostable.

Natural Circular Economy Complements the SB 54 Circular Economy

In enacting SB 54, the Legislature ensured a role for the existing non-waste recycling industry, consisting largely of recyclers (unaffiliated with any solid waste operation) who buy, broker, process, and/or sell recyclable materials as valuable commodities in the marketplace. For instance, SB 54 requires the producer responsibility organization ("**PRO**") to prepare a plan that, among other things, describes "…how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure."4 SB 54 and the Proposed Regulations also contemplate the use of alternative collection and recycling programs (those outside of the solid waste system) for increased flexibility and innovation. Importantly, the Legislature clarified that SB 54 "does not modify, limit, or abrogate in any manner the existing rights of an owner of recyclable materials to sell or donate those materials."5 In doing so, the Legislature acknowledged the importance of the non-waste recycling industry that has for decades functioned in an effective and efficient *natural circular economy*, which long predates the SB 54 circular economy (now being established) and is separate and apart from it. This *natural circular economy* is the original closed-loop system, which is well-established, self-sustaining, and successfully operates on market-based incentives to collect, process, and sell recyclable materials that get returned to the economic mainstream in the form of new products. In such a system, recyclable materials are valuable property (i.e., commodities) that are traded in the marketplace, and their potential is maximized for as long as possible before they are discarded, if ever.

The SB 54 framework, in contrast, is primarily focused on materials with insufficient market value to cover the costs of collection, recovery, and processing. To successfully implement SB 54, the Proposed Regulations must balance the state's environmental goals with economic realities by fostering flexibility and innovation while preserving the

proven success of the *natural circular economy*. A key element of this balance lies in the definition of “alternative collection.”

_____

3 Cal. Pub. Res. Code § 42041
2 Cal. Pub. Res. Code § 40000, et seq.
1 Cal. Pub. Res. Code § 40400

Response to B-44-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment B-44-3

Suggested Revisions

California’s statutory and judicial authorities have long protected the rights of private parties to engage in transactions of undiscarded recyclable materials (i.e., those outside of the solid waste system). Notably, in *Waste Mgmt. of the Desert v. Palm Springs Recycling Ctr., Inc.,* 7 Cal. 4th 478 (1994), the California Supreme Court explained that until materials are intentionally discarded, they remain the property of their owner, and that individuals and businesses are entitled to lawfully sell, donate, or transfer such materials in commerce prior to being discarded, if ever.

Consistent with this principle, SB 54 and its implementing regulations must not impinge upon these established rights. An owner’s right to sell, donate, or transfer recyclable materials that have not become solid waste is protected not only in case law but is also expressly codified in Public Resources Code Section 42040(b)(5), which prohibits any construction of SB 54 that would restrict such transactions. With this in mind, we propose the following revisions to the definition of “alternative collection” to ensure the regulatory framework better aligns with statute and legal precedent.

_____

5 Cal. Pub. Res. Code § 42040(b)(5); Assembly Bill 1526 (Stats. 2023, ch. 848)
4 Cal. Pub. Res. Code § 42051.1

Response to B-44-3

Comment rejected. As explained in greater detail in responses to comments B-40-2 and B-42-1, the definition of "alternative collection" addresses the semantic issue created by the unique definition of "curbside collection" stated in Public Resources Code section 42041(g): all collection that is not "curbside collection" because it is not conducted by or on behalf of local jurisdictions is "alternative collection." The commenter's proposal is based on its concern over application of concepts from solid waste law related to the definition of "recycling." As also explained in response to comments B-40-2 and B-42-1, that definition does not apply under the statute implemented by the proposed regulations. The sentence that the commenter proposes be added to the definition of "alternative collection"

is unnecessary because it would clarify an issue not requiring any clarification. Nothing in the proposed regulations purport to authorize, or can reasonably be interpreted to authorize, local jurisdictions to restrict the sale or donation of private property.

Comment B-44-4

Section 18980.1. Definitions

Original Text from Proposed Regulations - Section 18980.1.(a) (2) "Alternative collection" means a program that collects covered materials, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection, and is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction.

Suggested Text

(2) "Alternative collection" means a program that collects covered materials, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection, and is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code, because it is not a solid waste program administered by a local jurisdiction under Division 30 of the Public Resources Code~~is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction~~. Nothing herein shall be construed to authorize a local jurisdiction to expand its solid waste programs in a manner that modifies, limits, or abrogates rights protected under Public Resources Code section 42040(b)(5). *Rationale for Suggested Text* This proposed revision is necessary to create a clear and legally defensible distinction between municipally administered solid waste programs and independent, market-based collection systems.

Creates a Bright-Line Rule. Grounding the definition in the legal framework of Division 30 of the Public Resources Code provides a clear and legally defensible standard for differentiating "curbside collection" from "alternative collection." This approach avoids ambiguity and instead creates a bright-line rule: a program administered by a local jurisdiction under its solid waste management authority is not an alternative collection program.

Safeguards Protected Rights. The revision expressly incorporates the statutory protection for the rights of material owners under Public Resources Code section 42040(b)(5). This ensures that SB 54 cannot be misconstrued to authorize local jurisdictions to expand their programs in a way that displaces, limits, or abrogates the long-standing and statutorily protected commerce in undiscarded recyclable materials. This language preserves the productive coexistence of public and private systems, consistent with legislative intent and established law.

Aligns with Statutory Exemptions. Public Resources Code section 42041(e)(2)(H)(i) 6 allows for certain covered materials to be exempted from the Act's requirements if they are collected via alternative pathways outside of residential collection services and recycled at a responsible end market. Furthermore, our proposed definition provides the clarity needed to effectuate this provision, ensuring that materials flowing through private, commercial, retail drop-off, or independent aggregator programs are rightfully

eligible for consideration under this exemption framework envisioned by the Legislature.
Aligns with Policy Objectives. A flexible and broad definition for alternative collection programs is paramount to prevent valuable materials from being compelled into the solid waste system, where their economic value and processing efficiency would be diminished. The existing natural circular economy already provides a proven model for managing these materials as marketable commodities rather than waste, consistently achieving higher recovery rates and superior environmental outcomes. The revised definition enables communities, businesses, and entrepreneurs to develop innovative, customized collection methods that build upon existing expertise. Such an approach directly aligns with SB 54's objectives by harnessing the demonstrated success of the *natural circular economy*, which has long maximized material value and advanced sustainability through market-driven solutions.
A Note of Caution. We should exercise care to avoid the centralized management of alternative collection programs because doing so would almost certainly limit the innovation, flexibility, and efficiency that are key to their success. Centralized management could impose rigid frameworks that fail to account for the diverse needs of different industries, communities, and markets, which have long relied on the adaptability of the natural circular economy. Allowing private industry and independent recyclers to develop and manage these programs ensures that materials are handled as valuable commodities, maximizing their potential and reducing environmental impacts. In this way, alternative collection programs can remain agile, responsive to market forces, and better equipped to evolve with advancements in recycling technologies and practices. This decentralized approach ensures alignment with SB 54's goals of promoting sustainability and innovation while protecting the established *natural circular economy*.

_____
6 (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria: (I) The covered material is not collected through a residential recycling collection service. (II) The covered material does not undergo separation from other materials at a commingled recycling processing facility. (III) The covered material is recycled at a responsible end market. (IV) 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. Cal. Pub. Res. Code § 42041

Response to B-44-4

CalRecycle rejects this comment for the reasons provided in response to comment B-44-3, of which this comment is a continuation.

Comment B-44-5

Conclusion

To achieve SB 54's goals, the implementing regulations must preserve flexibility to optimize collection of covered materials, processing, and recycling methods. The Proposed Regulations should foster innovation in the new SB 54 framework while

protecting the robust, proven, market-driven *natural circular economy* that already exists.
These parallel systems are not in conflict; rather, they are complementary and can accelerate California's progress.
Allan Company is dedicated to contributing to the state's efforts and appreciates the opportunity to provide these comments.
Sincerely,
Nenad Trifunovic
General Counsel
cc: Jason A. Young, CEO (via email)
Graciela Castillo-Krings, Sacramento Advocates (via email)
Katherine S. Brandenburg, Brandenburg Group (via email)
Association of California Recycling Industries (ACRI) (via email)

Response to B-44-5

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-45: Eastman (Jessica Paschal)

Comment B-45-1

Eastman Chemical Company ("Eastman") respectfully submits these comments on the Department of Resources Recycling Recovery's ("CalRecycle" or "the Department") August 22, 2025, proposed additions to California Code of Regulations, Title 14, Division 7, Chapter 11.1, and Chapter 11.5 to interpret, make specific, and implement the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Stats. 2022, ch.75) ("the Act"). Eastman appreciates CalRecycle's efforts to develop these regulations and clarify the requirements to meet the obligations imposed by the Act. We offer these comments to suggest certain modifications that are necessary to ensure the objectives of the Act are implemented as statutorily defined.

Eastman Background

Founded in 1920, Eastman is a global specialty materials company that produces a broad range of products found in items people use every day. With the purpose of enhancing the quality of life in a material way, Eastman works with customers to deliver innovative products and solutions while maintaining a commitment to safety and sustainability. The company's innovation-driven growth model takes advantage of world-class technology platforms, deep customer engagement, and differentiated application development to grow its leading positions in attractive end markets such as transportation, building and construction, and consumables. As a globally inclusive and diverse company, Eastman employs approximately 14,500 people around the world and serves customers in more than 100 countries. The company is headquartered in Kingsport, Tennessee.

Eastman supports the development of a clear and equitable framework for encouraging the sustainable management of the end of life of packaging waste. This type of framework will facilitate the growth of the U.S. collection, recycling, and composting industry across a myriad of plastic streams and ensures certainty for investments. Eastman is contributing to this growth by operating the world's largest polyester depolymerization facility where we produce third party verified post-consumer recycled resins. While we have strong interest in supporting the development of an effective recycling infrastructure, we recognize that there are situations where plastic recycling may be impractical, such as food service settings with the potential for contamination from large amounts of food waste. In these situations, a lower carbon emitting and more practical solution may be compostable foodservice ware. As such, we have developed compostable materials produced from renewable sources, not of petroleum origin. These materials can be used to effectively replace plastic single-use food service ware and protein packaging trays, with a fully compostable end of life. We encourage the department to ensure the inclusion of these materials as a possible source for reduction of disposal of solid waste.

We request your consideration of these comments when developing the final regulations for implementing the Act.

Response to B-45-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-45-2

Article 1 – Definitions

The definition of “plastics or polymers” included in the regulation is not reflective of the use of the terms as referenced in the statute, specifically subdivision (d) of Section 42356.1. The referenced section of the statute absolves materials from complying with ASTM D6868 or D6400 (“ASTM Standards”), as identified subparagraph (1) of subsection (b) of Section 42356. The referenced ASTM standards define plastics and polymers separately and as such the regulations should define the terms separately, not as a phrase. To maintain continuity for materials that are absolved from the compliance, the definition of polymer should be adopted from the relevant ASTM Standards. It is recognized that the definition of plastic is defined in section 42041of the statute and has similarity to the ASTM Standards.

Additionally, while all plastics are polymers, particularly as defined by ASTM and the statute, not all polymers are plastics. Which further necessitates the separation and individual definition of terms. It is therefore recommended that the definition of polymer

that is included in the regulation is reflective of the definition in the ASTM Standards. We suggest including the definition of polymer in Article 1 to read: "a substance consisting of molecules characterized by the repetition (neglecting ends, branch junctions and other minor irregularities) of one or more types of monomeric units."

This will ensure that the correct breadth of materials are evaluated for labeling as compostable.

Response to B-45-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment B-45-3

Article 4 – Responsible End Markets
18980.4.1 – End Market Identification

With approximately 260 million tons of plastic disposed of each year globally and recycling rates hovering around 10 percent both globally and in the United States, new technologies are essential to increase recycling rates in the United States and in California. The recycling rate targets set forth in the Act are critical to addressing the plastic waste issue, and existing technology, namely mechanical recycling, is not capable by itself of meeting these rates. The Act requires increases in recycling rates, in addition to source reduction and reuse/refill efforts, to realize more efficient use of plastics for Californians. The Act and these regulations recognize that complementary and innovative technologies are necessary for creating a circular economy. Subsection (d) of Section 18980.4.1 provides a viable, yet stringent, pathway to ensure that recycling minimizes generation of hazardous wastes and greenhouse gases, while also minimizing the impacts to the environment, public health, and environmental justice.

Additionally, this section opens a pathway for innovative technologies to supply the material necessary for US manufacturers to include increasing amounts of high-quality post-consumer recycled content in their products, particularly for packaging that meets food contact quality requirements. Thereby meeting the intent of the legislation to establish a comprehensive circular economy framework to reclaim certain resources1.

As stated in subsection (b) of Section 42040, the Act aims to establish a comprehensive framework for a circular economy. A primary goal of the Act is to create a model for a US circular plastic economy and to promote the recycling of postconsumer plastic waste within the country. This will be critical to fully support the program and ensure economic viability of any new or established infrastructure that is necessary to achieve the goals of the legislation. The import of plastic waste to meet goals should be discouraged, while the recycling and use of US or North American waste should be encouraged. This could come in the form of prioritized ecomodulation bonuses for use of domestically sourced post-consumer recycled content. A second option is to prioritize the use of US

sourced postconsumer recycled content, originating from US waste, to meet the source reduction goals required in subparagraph (i) of paragraph (B) of subparagraph (2) in subdivision (a) of Section 42057.

Eastman is deeply committed to supporting the development of the U.S. recycling industry. To ensure that the Act contributes to this objective and that the Act is implemented in a manner that maximizes benefits to the environment and minimizes risks to public health, we urge CalRecycle to consider these comments, as well as relevant comments that were previously provided, when finalizing the regulation.

We would welcome discussing these issues further with you and your staff, and we look forward to working with you.

Response to B-45-3

CalRecycle rejects this comment. To the extent this comment expresses support for section 18980.4.1(d) of the proposed regulations, the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends structuring eco-modulation or source reduction to encourage the use of postconsumer recycled plastic sourced from the United States, see the response to comment O-39-1.

B-46: James Hardie (Marcus Kuizenga)

Comment B-46-1

Thank you for the opportunity to comment on CalRecycle's proposed regulations, Title 14, Division 7, Chapters 11.1 and 11.5, California Code of Regulations (2025), implementing SB 54, known as the Plastic Pollution Prevention and Packaging Producer Responsibility Act, Pub. Res. Code § 42040 – 42084 et seq. ("Proposed Regulations"). While James Hardie supports the overall goals and objectives of SB 54, some of the Proposed Regulations create unique challenges when applied to homebuilding, construction, and building material manufacturers. In comparison to other forms of waste streams generated by food products, retail, or single-site industrial locations, the building industry has a complex and multi-layered supply chain, which includes material manufacturers, distributors and retailers, contractors, builders, and consumers. There are also unique challenges with ensuring that homebuilding products are appropriately packaged and protected, given that they may be held prior to use for months or years and certain products must be protected against weather and other elements on a construction site prior to their use and incorporation into a home build.

California has recently enacted a number of regulations, including but not limited to certain exemptions and streamlined regulations under the California Environmental Quality Act, to expedite homebuilding in the state, increase the stock of available affordable housing, and reduce the overall cost of owning a home in California. The Proposed Regulations will result in increased costs for homebuilding manufacturers, contractors, and homeowners through imposing additional fees on manufacturers and

distributors of building materials that currently do not have alternative options for packaging their products for delivery to the end user. These costs will likely be passed on to the end users of the products, thereby increasing the costs of homebuilding. Given this concern and the complexity of the supply chain for homebuilding materials, we respectfully request that CalRecycle and the selected Producer Responsibility Organization ("PRO"), Circular Action Alliance, consider an exemption for such materials in acknowledgment of the state's goals of quickly increasing the supply of affordable housing and reducing costs for potential homebuyers. Alternatively, we recommend that CalRecycle and the selected PRO work with the homebuilding industry to implement a pilot program to address these specific challenges. Entities potentially subject to regulation also need further clarification on what would be considered a "de minimis" amount of "covered materials" and what would be considered an "integral part" of a product. Finally, the Proposed Regulations should implement an alternative fee schedule for packaging deemed essential to product integrity.

1. James Hardie Supports the Overall Goals of the Proposed Regulations, Which Align with Our Sustainability Goals

James Hardie is North America's #1 producer and marketer of high-performance fiber cement siding and backerboard. Our affordable, durable, low maintenance and innovative fiber cement products are manufactured in the United States from durable and resilient raw materials, delivering endless possibilities of home exterior design and aesthetics to consumers. We offer a variety of patterned profiles and surface finishes for a range of applications, including external siding, trim, soffit lining, internal linings, walls, facades, floors and tile underlayment for use in residential, commercial and industrial applications. We employ Californians at our office in Mission Viejo and our manufacturing and R&D facilities in Fontana. James Hardie provides a positive economic impact to the state through its manufacturing output and the provision of diverse job opportunities. 332 employees within James Hardie call California home, with our Fontana manufacturing plant delivering over $30 million annually in local goods and service purchases.

James Hardie is a subsidiary of James Hardie Industries plc (NYSE / ASX : JHX) whose other subsidiaries also produce high-performance, low-maintenance building material brands, including TimberTech® decking, AZEK Exteriors® and Versatex® trim boards, StruXure® pergolas, Ultralox® and Intex® railing systems. Collectively, James Hardie brands offer incredible value, as well as endless design possibilities for homeowners looking for siding, decking, trim, railing, and pergolas.

James Hardie supports the overall goals of SB 54 to expand upon existing efforts to create circular waste management that reduces the amount of nonrecyclable materials and increases recycling rates to reduce waste and efficiently use the planet's resources. We believe there are ultimate benefits from increasing the amount of recycled material from construction sites. Through collaborative efforts among CalRecycle, the PRO, building material manufacturers, contractors, and homebuilders, we can significantly reduce landfill volume while advancing our recycling goals.

Sustainability is foundational to how we do business. As illustrated in our 2025 Annual Sustainability Report, we continue to make progress, evolve and innovate our manufacturing operations and product lines and services to help ensure homes are both affordable and built to last. In James Hardie's manufacturing operations, we:
• **Hire Locally**: We hire 93% of our employees from the local communities in which we operate.
•**Source Raw Materials Locally**: We source 81% of our raw materials from within 150 miles of our facilities.
•**Deliver Products Locally**: We deliver 65% of our products within 500 miles of our manufacturing operations.
• **Reduce Landfill Waste**: We diverted over 11 percent of manufacturing waste from local landfills in fiscal year 2025.

AZEK also embeds sustainability into every stage of its operations, from material sourcing and manufacturing to product durability and end-of-life solutions. AZEK TimberTech® decking board products are made with up to 85% recycled material. Guided by a full-circle approach, AZEK transforms waste and scrap into high-performance, long-lasting materials and aims to incorporate one billion pounds of recycled content into its manufacturing annually. Since 2019, AZEK has used approximately 2.6 billion pounds of waste and scrap to manufacture its products. In fact, with its Full Circle Recycling Program, AZEK has become the largest vertically integrated recycler of PVC in North America. Additional details can be found in AZEK's latest sustainability report available here. Ultimately, we want to work with CalRecycle and the PRO to reduce waste streams while continuing to ensure that we can provide high-quality and durable products for the homebuilding industry.

Response to B-46-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment B-46-2

2. CalRecycle and the PRO Should Create an Exemption for Building Materials Delivered to Homebuilding or Remodeling Locations to Avoid Significant Adverse Impacts to Homebuilders and Homebuyers

CalRecycle has set up a path for a PRO or an independent producer to submit a request for an exemption where there are unique challenges to complying with SB 54. Pub. Res. Code § 42060(a)(3). The Proposed Regulations implement this provision by creating a route for applying for a term-limited exemption. Proposed Regulations § 18980.2.4(g). Given the complexities involved in recycling and disposal of building material packaging, CalRecycle and the PRO should create an exemption for such packaging while the PRO works with the industry to identify either other products that comply with SB 54 requirements or alternatives for recycling and/or disposing of such

material. Such an exemption is critical to avoid increased homebuilding costs and potentially significant impacts to product quality and protection of homebuilding materials.

A. An Exemption for Building Materials Would Avoid Additional Homebuilding Costs and Adverse Impacts to Housing Supply

It is well known that California is in the midst of an affordable housing shortage. According to a recent McKinsey & Company report, California loses approximately $140 billion per year, or 6% of its GDP, due to the housing shortfall. The California Legislative Analyst's Office has determined that California home prices have long been—and continue to be—much more expensive than the rest of the US. Prices for mid-tier homes are more than twice as expensive as the typical mid-tier US home.1 Policies and regulations that increase complexity for both homebuilders and building material manufacturers will only aggravate these trends. The Proposed Regulations will result in increased costs for homebuilding manufacturers, contractors, and homeowners – in the short term – through imposing additional fees on manufacturers and distributors of building materials that currently do not have alternative options for packaging their product for delivery to the end user. These costs will likely be passed on to the end users of the products, thereby increasing the costs of homebuilding and, ultimately, homebuying. Adopting an exemption for such materials, while the regulated industry works with the PRO to establish feasible alternatives, would avoid adversely impacting the supply of affordable housing in California.

1See https://lao.ca.gov/LAOEconTax/Article/Detail/793

B. An Exemption Would Allow Additional Time Needed to Address the Complexities of Packaging Associated with Building Materials

While SB 54 and the Proposed Regulations impose costs and potential penalties on product manufacturers using the framework of a simple manufacturer-to-distributor-to-consumer supply chain, the homebuilding construction material industry has a much more complex supply chain that justifies exempting it from the Proposed Regulations. Home building requires a wide variety of building materials and products with diverse and unique packaging requirements, ranging from simple paper bags for commodities like cement, to complex films and composite materials for protecting high value items such as windows and factory-finished siding, to expanded polystyrene blocks, shrink wrap and complex nonwoven fabrics or laminate films.

Packaging materials used on construction sites must serve multiple critical functions beyond basic containment. They are engineered not only to safeguard products during transportation and storage but also to withstand exposure to external conditions such as moisture, dust, and temperature fluctuations while staged outdoors. This is especially important for materials that are sensitive to weather, which can degrade or become unusable if not properly protected. Their use, and the associated durability of packaging, often depends upon the construction schedule of the homebuilder, which can be days, months, or even years depending upon the nature of the project and construction schedule.

In addition to shielding products from the elements, packaging plays a vital role in ensuring the safe handling and delivery of large, fragile components—such as windows, doors, and glass panels—by providing structural support and impact resistance. These protective features help prevent damage during loading, unloading, and movement around the jobsite, reducing waste and costly delays. Moreover, well-designed packaging can contribute to site efficiency and safety, offering features like stackability, clear labeling, and ease of access that streamline inventory management and reduce the risk of accidents. In this way, packaging becomes an integral part of the construction logistics system, not just a disposable layer. Thus, the performance requirements for building material packaging can be much more demanding than for other industries. Therefore, we encourage CalRecycle and the PRO to consider the sector-specific packaging needs of the homebuilding construction industry before requiring replacement of existing materials with commonly recyclable alternatives.

C. An Exemption Would Allow Time to Address a Complicated and Varied Supply Chain

Consideration of homebuilding materials and associated packaging must also include the unique aspects of the associated supply chain. Unlike the supply chain for consumer products, where a product is purchased by a retail outlet and sold to a consumer who removes the packaging and (where available) places it into a recycling bin utilized by an existing recycling program, the supply chain for homebuilding is far more complex. There are a wide range of trades involved: concrete pouring, framing, roofing windows and siding installation, masonry, plumbing, electrical trades, interior finishing, painting and many more. Each uses its own set of building materials with its own set of packaging types. Use, disposal, and potential recycling of packaging materials is typically executed by multiple independent contractors who remove packaging at different points in time during the home building process. This packaging is often simply placed in dumpsters at the job site for eventual landfilling, with little effort to sort or segment the waste.

Mechanisms, guidance and programs for enabling efficient collection and separation of recyclable homebuilding materials at construction sites are rare, if employed at all. CalRecycle has advised that recycling opportunities in many areas of the state may be limited, and disposal may be the only option.2 While building material manufacturers may be able to improve the recyclability of the packaging they use, homebuilders will ultimately be responsible for managing the collection and removal of packaging waste from a construction site. Without clear guidance to homebuilders and an established infrastructure for processing this packaging waste, a key piece of the circular economy is missing. Collaboration between building material manufacturers, builders, recyclers, CalRecycle, and the PRO is needed to develop feasible collection solutions for recyclable packaging on construction sites. The Proposed Regulations do not adequately address and acknowledge all of these players in the homebuilding supply chain. This oversight is compounded by the fact that the Proposed Regulations do not define “producer” to include manufacturers of the “covered material” used in the homebuilding industry, just the users of the covered material. Pub. Res. Code §

42041(w). These complexities have been acknowledged in other states, such as Colorado,3 some of which have exempted packaging associated with business-to-business transactions (such as from a building product manufacturer to a homebuilder using the product).

For these reasons, the Proposed Regulations should include an exemption for homebuilding material packaging associated with home construction and remodeling, distributed pursuant to a business-to-business transaction, until a more targeted and feasible framework can be established.

Response to B-46-2

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for building materials delivered to homebuilding or remodeling locations. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

Comment B-46-3

3. CalRecycle and the PRO Should Create a Pilot Program to Evaluate how to Reduce Waste and Increase the Recyclability of Building Materials

The statute authorizes CalRecycle to adopt regulations to identify responsible end markets. Pub. Res. Code § 42041(ad). The Proposed Regulations shift this responsibility to the PRO to (1) evaluate technology that could be used to recycle covered material and ensure that the technology can constitute recycling; (2) evaluate the feasibility of collecting, transporting, processing and recycling covered material; (3) evaluate how end markets can meet the proposed standards; and (4) create pilot programs to address these issues. Proposed Regulations § 18980.4.3(b)(1).

We believe that there are opportunities to work with all components of the building material supply chain, including packaging manufacturers, building material manufacturers, homebuilding retailers, and the ultimate users of the products on homebuilding or remodeling job sites, to create a pilot program to reduce waste and increase the recyclability of packaging associated with building products, including specialty packaging like foam blocks, composite inserts, or non-woven bags. While this comment does not propose changes to the Proposed Rulemaking, we encourage CalRecycle and the PRO to engage with this industry to develop a pilot program to address these issues. Industry input from all segments of this supply chain is critical to ensure meaningful outcomes, practical data collection, and address the complexity of recycled packaging from construction sites. Since these pilot studies will take time, we

suggest that CalRecycle consider an extended compliance timeline for covered material necessary for homebuilding material packaging that could be impacted by such a pilot project.

2https://calrecycle.ca.gov/condemo/
3Co. Rev. Stat. § 25-17-703(13)(b)(VI)("'covered materials' does not include: […] packaging material used exclusively in industrial or manufacturing processes'").

Response to B-46-3

Comment rejected. As recognized by the commenter, to the extent this comment encourages CalRecycle and the PRO to engage with industry to create a pilot program for packaging associated with building products, the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends consideration by CalRecycle of an extended compliance timeline for covered material necessary for homebuilding material, no change is necessary. First, the recommendation for "an extended compliance timeline" is vague and CalRecycle cannot discern the specific changes to the proposed regulations that are being recommended by the commenter. Second, the proposed regulations are consistent with the requirements of the Act, including PRC sections 42051, 42051.1, and 42060, and no change is necessary to the implementation or enforcement of the Act. PRC section 42060, as implemented by sections 18980.2.3 and 18980.2.4 of the proposed regulations, already provides for all necessary and appropriate exemptions for covered materials under the Act. To the extent the commenter may want to extend the timeline for its compliance obligations under the Act, it may apply for an exemption for covered materials under those sections. Additionally, PRC section 42061(a)(3)(B), as implemented by section 18980.3.1 of the proposed regulations, may provide another route for producers to extend compliance timelines for covered materials. Because appropriate opportunities for exemptions and extended compliance timelines already exist under the proposed regulations, no change is necessary.

Comment B-46-4

4. Certain Key Defined Terms Remain Ambiguous and Require Further Clarification

Several key definitions are critical to regulated entities to determine the scope of their responsibilities under SB 54 but require further clarification. SB 54 defines "covered material" as including "single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer." Pub. Res. Code § 42041(e)(1)(A). Packaging is defined as "any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods." Pub. Res. Code § 42041(s). It does not include (1) any element of the packaging with a de minimis weight or volume or which is not an "independent plastic component" or (2) a "component or

element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together." Pub. Res. Code § 42041(s)(4)(A)-(B).

The Proposed Regulations provide requirements to guide how a PRO is to evaluate whether a component or group of components is of "de minimis weight or volume," which includes the following criteria:
(A) It is not an independent plastic component.
(B) Due to its small size or weight and other relevant characteristics, if any, it has no effect on whether any covered material satisfies any of the recyclability criteria provided in section 42355.51 of the Public Resources Code.
(C) Due to its small size or weight and other relevant characteristics, if any, it does not prevent recyclability pursuant to subdivision (c) of section 18980.3 or make recycling or composting more difficult pursuant to subdivision (h) of section 18980.6.7. 6
(D) Designating it as having a de minimis weight or volume enables usage of recyclable, compostable, reusable, or refillable packaging.
(E) Its disposal, processing, and handling does not create health or safety risks or have a significant effect on the environment.
(F) Its use in packaging is not prohibited under any law of this state or federal law.

Proposed Regulations § 18980.2.2(b)(2). "Independent plastic component" does not include "a coating, film, tape, sticker, label, or other sheet-like material adhered to the surface of another component or group of components." Proposed Regulations § 18980.2.2(b)(1)(B)(ii). James Hardie requests further clarification concerning the products that would meet these definitions. For example, there are several products that could fit into this exception, including bar code stickers on grocery store produce, plastic film on temporary tattoos that is discarded upon application, or thin film that is adhered to windows, mirrors, and other building products but removed upon installation in a home. Such materials are a small fraction (by weight, volume, or other characteristic) in comparison to the product itself; however, the Proposed Regulations are ambiguous as to whether such materials would meet the terms of the above exemption. James Hardie requests confirmation from CalRecycle and/or the PRO that such materials would be exempted under the Proposed Regulations as "de minimis weight or volume."

The Proposed Regulations also do not further define what is considered an "integral part of the product." This would appear to exempt products like a tube of toothpaste, a tube of caulk, or containers of paint. The Proposed Regulations should include a definition of what is considered an "integral part of the product" and/or examples as to what would be exempt based upon that term.

Response to B-46-4

CalRecycle rejects this comment because, rather than request a modification to the proposed regulations, it requests that CalRecycle issue a determination of how the proposed regulations would apply to certain categories of materials, some of which might not even be packaging. The proposed regulations provide detailed criteria that are sufficient to be applied consistently to packaging

components; to the extent that stakeholders would benefit from CalRecycle providing illustrative examples of such applications, no revision of the proposed regulations is necessary for CalRecycle to do so. If the commenter intended to propose that the regulations define "integral part of the product," CalRecycle declines to do so because the proposed regulations do not use that term. In any event, the word "integral" has a readily discernible, plain meaning in the context in which the statute uses it (section 42041(s)(4)(B), and the commenter does not propose any definition that it would consider sufficient.

Comment B-46-5

5. The Proposed Regulations Should Include an Alternative Rate Schedule for Packaging Considered Essential to Product Integrity within the Homebuilding Industry

The Proposed Rule outlines eco-modulated producer dues based on packaging recyclability in order to carry out Public Resources Code Section 42053. Proposed Regulations § 18980.6.7. The Proposed Regulations contemplate that the PRO may set an alternative reduced rate for select covered material if an alternative collection program is utilized. Proposed Regulations § 18980.6.7(e)(1)(D). James Hardie requests that CalRecycle consider an alternative reduced rate for covered material that is deemed essential for product integrity and not yet widely recyclable if the development of an alternative collection program for a specific industry is under development but not yet utilized. For example, James Hardie is evaluating pallet bag materials with improved durability for more effective long-term protection that eliminates the need for additional tarping on trucks, further reduces transportation costs, and improves safety. While these non-woven materials are technically recyclable, there is no established process or infrastructure for recycling them at this time.

SB 54 also identifies certain factors that may qualify participant producers for fee credits to their fee schedule. Pub. Res. Code § 42053(c)(2). Two of these factors are:
• Source reduction related to right-sizing, optimization, and bulking of packaging, or concentrating the product packaged to reduce packaging.
• Actions taken by the producer to accelerate source reduction and to invest in sustained and robust reuse and refill systems. The PRO may create a mechanism to allow producers to receive a credit for achieving source reduction beyond what producers of similar covered material are achieving.

Pub. Res. Code § 42053(e)(2), (6). James Hardie requests clarification on what meets the definition of “bulking of packaging” to be considered for the fee credit under Public Resources Code Section 42053(e). James Hardie also requests clarification on whether producers that are not currently meeting the strict reuse requirements of Public Resources Code Section 42041(af)(1) but can demonstrate through documentation that efforts to meet that standard are being made will satisfy Public Resources Code Section 42053(e)(6). James Hardie would also like to understand the extent of documentation that would need to be provided to the PRO to support credit determinations. Incorporation of the above considerations would incentivize the industry to continue to

work to improve recyclability while avoiding potential additional costs to the homebuilding industry and negatively impacting housing affordability.

Response to B-46-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. To the extent this comment recommends consideration by CalRecycle of an alternative reduced rate for covered material that is not yet utilized in an alternative collection program, no such alternative reduced rate is necessary or appropriate. The purpose of section 18980.6.7(e)(1)(D) of the proposed regulations is to incentive the continued use of alternative collection programs with measurable performance relative to the statewide performance of curbside collection for the same materials. To the extent an alternative collection program is under development but not yet utilized, it may become subject to an alternative reduced base fee rate once it achieves measurable performance. Furthermore, to the extent this comment recommends clarifying "bulking of packaging" as it is used in PRC section 42053(e)(2), such language is clear and used in its ordinary sense, and no further clarification by CalRecycle is necessary. To the extent this comment recommends clarifying the reuse and refill requirements in PRC section 42053(e)(6), no clarification is necessary because such language has the same meaning as defined in PRC section 42041(af) and further clarified in section 18980.2.1 of the proposed regulations. Finally, to the extent this comment recommends clarifying the extent of documentation necessary for the PRO's credit determinations, no clarification is necessary because the amount of documentation necessary is within the discretion of the PRO under PRC section 42053. See the response to comment B-13-12. Therefore, no changes are necessary.

Comment B-46-6

6. The PRO is Required to Engage in Sector-Specific Outreach for the Homebuilding and Construction Industry

SB 54 requires that the PRO’s Producer Responsibility Plan include “efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems,” including (1) “[e]ducation and engagement to reduce the rate of inbound contamination or unwanted materials,” and (2) “[o]utreach to obtain consistently high levels of public participation in and use of collection services and reuse and refill systems.” Pub. Res. Code § 42051.1(e). Given the complexity and specificity of the homebuilding industry’s packaging discussed above, we would welcome proactive engagement with CalRecycle and the PRO as to how to best address these issues to improve the recyclability of packaging used in the industry while ensuring that we maintain the integrity and quality of the products used in homebuilding. We recommend that the Producer Responsibility Plan include (1) dedicated technical assistance resources and sector-specific outreach (e.g., webinars, FAQs, design

guides) tailored to building material manufacturers, and (2) stakeholder engagement mechanism to identify implementation challenges in real time.

Response to B-46-6

CalRecycle rejects this comment. PRC section 42051.1(e) already requires that the Producer Responsibility Plan must include education and promotion efforts designed to encourage proper participation in recycling, composting, reuse, and refill systems while also requiring education and engagement activities to reduce inbound contamination and obtain consistently high levels of public participation in covered material collection services. As such, the statute already lays out a robust and detailed framework for the education and outreach requirements.

Further, the proposed regulations provide additional clarifications and requirements to successfully implement the statutory framework to achieve successful education and outreach, including section 18980.8(d) of the proposed regulations which indicates that in addition to the examples provided in the PRC, the PRO is required to provide a description of performance measures, which shall evaluate performance of the comprehensive education and outreach program to ensure that the education and outreach goals provided in the Act are successful.

Given the wide range of industries included in SB54, providing each industry a specific education and outreach description and requirements would not only be impracticable, but may also result in having the opposite effect of achieving the goal by creating a less flexible and robust education and outreach program. Further, the plan must also include a process for coordinating education and promotional efforts between entities, which should facilitate stakeholder participation.

Thus, the commenter's concerns are already addressed within the existing statutory and proposed regulatory framework, and additional prescriptive requirements are neither necessary to achieve successful education and outreach, nor are specific descriptions for each industry or sector feasible. As such, no changes to the proposed regulatory text are necessary in response to this comment.

Comment B-46-7

7. Conclusion

Thank you for the opportunity to comment upon the Proposed Rulemaking. As noted above, while James Hardie shares the overall objectives of SB 54 to increase recyclability of packaging materials, improve sustainability, and reduce landfill waste, there are a variety of unique issues presented by the homebuilding supply chain that require further consideration by CalRecycle and the PRO. To avoid significant adverse impacts to homebuilders and homebuyers, we propose that CalRecycle and the PRO create an exemption for covered materials used on building products, delivered as a

result of a business-to-business transaction, to homebuilding or remodeling sites. Further, we respectfully request that CalRecycle and the PRO consider adopting the recommended pilot program, alternate rate schedules, and clarification for key terms described above.

We look forward to opportunities where we can discuss these issues in greater detail with CalRecycle and the PRO to meet the goals of the program, continue to ensure the quality and integrity of our products as they are installed in homes throughout California, and avoid imposing additional costs on California homebuilders and homebuyers.

Response to B-46-7

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

B-47: Olivier Jamin

Comment B-47-1

Dear Ms. Richmond,
Thank you for the opportunity to submit comments regarding the latest draft regulations (referred to as the “Draft SB 54 Regulations”) from California’s Department of Resources Recycling and Recovery’s (“CalRecycle”) implementation of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (“SB 54”). The comments below are submitted on behalf of a large packaging company with roughly 700 employees in California (“Company”).
At the outset, CalRecycle’s goals in implementing California’s Extended Producer Responsibility (EPR) program are consistent with Company’s sustainability goals and those of our customers. Company appreciates CalRecycle’s efforts in trying to address many different supply chain scenarios as part of its rulemaking process and recognizes that implementing the EPR program is a significant challenge given the ever-expanding complexity of supply chains in the U.S. and worldwide. Additionally, Company very much appreciates CalRecycle’s receptiveness to previous industry comments regarding the greater acceptance of chemical recycling technologies as well as the acknowledgement that empty packaging does not constitute single-use packaging and should therefore be excluded as a covered material.
However, Company is concerned that the regulations as drafted may pose significant challenges to effective compliance with SB 54 and associated regulations, and could unintentionally harm the industry’s sustainability efforts, contrary to the goals of SB 54. Company’s comments are focused on 1) the concept of “trending” for purposes of meeting recyclable goals and recycling rate targets; 2) CalRecycle’s proposed exclusion for packaging components used by a food or agricultural commodity; and 3) CalRecycle’s proposal for criteria applying to eco-modulation.

Response to B-47-1

Comment rejected because it only alludes to, but does not set forth, the commenter's objections and proposed changes. To the extent other portions of the submission do set forth objections and proposals requiring responses, CalRecycle has done so in response to those portions.

Comment B-47-2

1. The "trending" concept should also apply to the mandate of Section 42050(c) of the California Public Resources Code.

Context: As currently introduced, the concept of "trending" under SB 54 and the Draft SB 54 Regulations seems focused on meeting the requirements of Section 42050(b) of the California Public Resources Code, which requires producers to "[e]nsure that all covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable or eligible for being labeled 'compostable'." This transpires from the statutory framework and the "Final Statement of Reasons" published along with the Draft SB 54 Regulations which refer multiple times to material categories as "trending towards recyclability." While this concept in the context of meeting Section 42050(b) recyclability requirements is helpful, Company urges CalRecycle to consider adopting a similar concept for purposes of meeting the requirements of Section 42050(c) which requires plastic covered material to meet certain recycling rates by 2028, 2030, and 2032 to be eligible for sale in the state.

Issue: As currently drafted, a plastic covered material category may be prohibited from sale in the state if that category does not meet the 30% recycling rate target by January 1, 2028. While Company understands CalRecycle's desire to adopt aggressive recycling rate targets, those targets may also hurt the packaging industry's ability to innovate and create more sustainable and environmentally-friendly packaging options that may need a ramp-up period to achieve those recycling rate targets. While Draft SB 54 Regulations do provide limited transitional relief for new covered material categories introduced after 2024, see Section 18980.3.2, this relief is limited until one year of data is available, and is likely inadequate for producers to meet the aggressive recycling rate targets of Section 42050(c). Even for existing covered material categories, Section 42050(c)'s targets are likely unachievable for large categories that currently lack viable alternatives, which could significantly impact the ability of businesses to safely, economically, and carbon-efficiently get goods to consumers in the state. For example, flexible plastic packaging can significantly extend product shelf life which reduces food waste and the carbon emissions from food waste, and enables more efficient and reduced weight in transportation which also reduces carbon emissions compared to currently available rigid plastic and non-plastic alternatives. However, despite these benefits, there is a high risk the material may not meet the 30% recycling rate target by 2028.

Solutions: First, Company urges CalRecycle to exempt flexible plastic packaging from Section 42050(c) if it finds evidence that there is significant and positive momentum in increasing the recycling rates for this covered material category toward the required rate. For existing covered material categories, CalRecycle could exempt a plastic

covered material category from meeting the recycling rate targets of Section 42050 if the category in question is showing an increase in recycling rates year-over-year of at least 2% AND demonstrates an ability to comply with the targets by achieving the recycling rates of Section 42050(c) within a particular county or city. Alternatively, CalRecyle could exempt a plastic covered material category from meeting the recycling rate targets of Section 42050 if the category in question is showing an increase in recycling rates year-over-year of at least 2% AND the category in question is shown to be more sustainable than other available packaging options in similar categories. For new covered material categories created after 2024, those new categories should be exempt from meeting the requirements of Section 42050(c) for at least 5 years after the creation of the category so long as the category is showing an increase in recycling rates year-over-year of at least 2%. Finally, for purposes of meeting the recycling rate targets of Section 42050(c), CalRecycle should make clear that both local and alternative (including private) collection qualify for meeting those rates.

Response to B-47-2

Comment rejected. There is no statutory basis, and the commenter identifies none, for an exemption from recycling rate requirements for items showing "momentum in increasing recycling rates." Public Resources Code section 42061(a)(3)(B) addresses materials that are trending towards meeting recyclability criteria, but that provision is irrelevant to compliance with section 42060(c). The commenter also erroneously suggests that CalRecycle, through the proposed regulations, and not the Legislature through its enactment of section 42060(c), has "adopt[ed] aggressive recycling rate targets." The commenter's requested change is also unnecessary because exemptions pursuant to Public Resources Code section 42060(a)(3) (addressed in section 18980.2.) encompasses compliance with Public Resources Code section 42050(c).

The commenter also proposes that the regulations "make clear that both local and alternative (including private) collection qualify for meeting those rates." No change is necessary because the extent of recycling, not collection, is used in the calculation of recycling rates, and nothing in the proposed regulations suggests that materials recycled after being collected through alternative collection programs would be disregarded in that calculation.

Comment B-47-3

2. The food and agricultural commodity exclusion should better balance the need for innovation and sustainability with the burden on producers.

Context: The Draft SB 54 Regulations propose to adopt a categorical exclusion for packaging or packaging components used by a food or agricultural commodity “if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration.” See Section 18980.2 of the Draft SB 54 Regulations. This seems to implement Section 42060(b) of the California Public Resources Code mandating CalRecycle to ensure that “any

regulations adopted pursuant to [SB 54] consider guidelines and do not conflict with regulations issued by the [FDA] and [USDA]…" Under the Draft SB 54 Regulations, such packaging or packaging components would not be considered "covered materials" and not be subject to the SB 54 mandates. To support the categorical exclusion, a producer must make a determination that certain packaging qualifies for the categorical exclusion and must notify CalRecycle and provide a summary of the basis for that determination.

Issue: While Company understands the purpose of this categorical exclusion to balance the goals of SB 54 and important food safety requirements, Company believes that such a categorical exclusion from the "covered material" definition unnecessarily compromises the goals of SB 54 and stifles sustainability research, development, and innovation. Under the proposed language, producers might be incentivized to abandon research initiatives that could lead to packaging alternatives that would prevent them from finding that "it is not reasonably possible to use other packaging," because such initiatives could result in more products qualifying as "covered materials" and as such, higher participation fees. Alternatively, a producer that does invest in its products to create sustainable alternatives would be penalized because that producer would not be able to claim the categorical exclusion and would have to meet the requirements of Section 42050 of the California Public Resources Code, and report and pay fees on those products despite benefiting the state by creating and putting into the market more sustainable packaging options. CalRecycle should adopt a framework within the proposed exclusion that rewards producers for innovating with more sustainable packaging options while complying with FDA and USDA regulations.

Response to B-47-3

Comment partially accepted and partially rejected. CalRecycle accepts this comment with regard to food and agricultural packaging to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2). CalRecycle rejects the comment, however, to the extent it suggests that section 18980.2(a)(2) should be further revised to establish a new "framework" for addressing innovation incentives. As the commenter concedes, section 18980.2(a)(2) strikes a balance between the goals of SB 54 and food safety requirements. The revisions clarify that balance and ensure that the exclusion of food and agriculture packaging is not overbroad or vulnerable to abuse. Moreover, the commenter does not offer a proposal more specific than "a framework . . . that rewards producers for innovating . . . while complying with FDA and USDA regulations." CalRecycle is unable to identify a framework that

would accomplish that while still fulfilling the mandate in Public Resources Code section 42060(b) to consider federal law and avoid conflicts with it. The statute does not authorize CalRecycle to create affirmative "rewards," especially for entities that are not producers to begin with, nor can a PRO plan create incentives or disincentives to directly affect behavior by entities that are not required to participate in it. Also, the commenter's implied assertion that the statute and proposed regulations do not already incentivize innovation is incorrect. Should a packaging manufacturer develop packaging that could readily be used to comply with federal laws concerning food and agricultural commodities, no entity would be able to assert that there is no such packaging available; that manufacturer would have an immediate, large market for that packaging. Because the commenter has not provided a specific proposal for such a framework, no further response is required.

Comment B-47-4

3. Eco-modulation and application of the "more difficult to recycle" test

Context: Company understands eco-modulation to be designed to incentivize product design and material choices that favor reduced environmental impact by considering factors such as recyclability, reuse, toxicity, labeling and others. By adopting design choices that reduce the environmental impacts of packaging, a producer can lower its participation fees. On the other hand, materials that are more difficult to recycle may result in an increased participation fee. This later point is emphasized in Section 42053(d)(2) of the California Public Resources Code, providing that "[i]f recycling or composting of the covered material is made more difficult by the incorporation of specific elements […] the fee for that covered material shall be sufficient to account for the increased cost to manage that covered material." In turn the Draft SB 54 Regulations provide that "[a]n element of covered material shall be considered to make recycling more difficult […] if, as described in the design guide, the element "requires test results" or otherwise prevents the covered material from being considered "preferred." See Section 18980.6.7(h) of the Draft SB 54 Regulations.

Issue: The proposed language is at odds with the goals of SB 54 and the concept of ecomodulation, which is supposed to incentivize sustainable design choices in packaging. Imposing a malus on a product simply because it "requires test results" would stifle innovation and sustainability in packaging products because a new type of packaging, while having less environmental impact, may require test results to show recyclability due to its novelty. The proposed language would thus penalize a producer from innovating and reducing its impact, contrary to the stated goals of SB 54 and eco-modulation. In addition, whether a product "requires test results" has no bearing on whether the particular product is actually more difficult to recycle. To the contrary, the test results may actually show that the product in question is easier to recycle than alternatives. Requiring testing, in and of itself, does not make a product "more difficult to recycle" if the testing shows that the product was just as easy to recycle to begin with.

Solution: Company would strongly recommend removing the language from the Draft SB 54 Regulations suggesting that a product may be "more difficult to recycle" because it requires test results for purposes of eco-modulation. Instead, the language should

recognize that a product is not “more difficult to recycle” if testing shows that the product is in fact recyclable.

Best regards,
Davis Wright Tremaine LLP

Response to B-47-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42053 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42053(d)(2) requires a PRO to structure the producer fee schedule to account for any increased cost to manage covered material for which recycling is made more difficult by the incorporation of specific elements. Therefore, section 42053(d)(2) only applies to the extent the presence of certain elements increases the cost of managing covered materials. That section further authorizes CalRecycle to establish criteria to determine when recycling is made more difficult by the incorporation of specific elements. The revised section 18980.6.7(h) of the proposed regulations implements this requirement and establishes these criteria by providing that an element of covered material is considered to make recycling more difficult if, as described in the APR design guide, the element "requires test results" or otherwise prevents the covered material from being considered "preferred." Therefore, to the extent the incorporation of such elements in covered material results in increased costs to manage that covered material, those increased costs are required to be accounted for in the producer fee schedule and the producer of that covered material will be required to pay for such costs. However, if, as this comment suggests, the covered material containing such elements achieves the required test results and the elements of that covered material do not otherwise increase the cost of managing that covered material, then a PRO is not required to account for those elements in its producer fee schedule.

B-48: CJ Biomaterials (Lauren Scott)

Comment B-48-1

On behalf of CJ Biomaterials, thank you for the opportunity to provide comments on the proposed regulations issued on August 22, 2025. Our comments center around the provisions that impact compostable covered materials, including both home and industrial compostable products.

CJ Biomaterials is a division of CJ Group, a global lifestyle company with a strong footprint across the United States. CJ Group is the world's leading supplier of fermentation-based bioproducts for animal nutrition, human nutrition, and biomaterials at its 13 manufacturing facilities worldwide. Leveraging this fermentation process and

expertise, CJ Biomaterials is focused on delivering meaningful solutions to the global problem of plastic waste and other sustainability challenges at scale.

Specifically, CJ Biomaterials is working to develop and expand the use of biopolymers to help create a more sustainable future. Our focus is on a specific type of biopolymer called polyhydroxyalkanoates (PHAs). PHAs are a biopolymer that can serve as an alternative to traditional plastics for use in food serviceware, flexible film packaging, and in other products and packaging used for collection and diversion of organics from landfills.

Although there are many end-of-life scenarios that serve PHA-based products, composting presents as the most efficient, appropriate, and climate-positive pathway for PHA-based foodservice and food contact packaging.

Article 2- Covered Material and Covered Material Categories

We believe the language in § 18980.2(a)(2) provides a clear and transparent pathway for entities to pursue exemptions if they believe that compliance with the regulations will not be feasible in a specific covered material category. We support the outlined plan to establish a public database that contains a list of each exemption granted by the Department. This will help accelerate innovation targeted at these categories and applications in which no suitable existing material exists.

Response to B-48-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment B-48-2

Article 2- § 18980.2.1 Exclusion of Reusable and Refillable Packaging and Food Service Ware.

The regulatory text proposed establishes a blanket exemption for reusable and refillable products. At the same time, the proposal removes all meaningful parameters around the definition and marketing of reusable and refillable products. This will allow for a host of bad actors to circumvent the program and legal requirements by claiming their product is reusable or refillable. Additionally if these products are not included within the scope of covered materials, the PRO will be unable to gather data and have producers report on key metrics including production data, end of life disposal, and costs associated with their use. We ask the Department to include these products within the regulatory framework in order to manage the broader packaging ecosystem and ensure unintended consequences associated with shifting materials are avoided.

Response to B-48-2

CalRecycle rejects this comment for the reasons provided in response to comment B-38-3.

Comment B-48-3

Article 2- §18980.2.5(a) Covered Material Category List Updates

SB 54 is designed to provide a pathway for products to be recycled or composted. To help establish this pathway, PRC 42061(d) directs CalRecycle to create a list of covered material categories that are deemed compostable. We appreciate the alignment of these determinations to the statutory eligibility to be labeled and sold in the state as 'compostable'.

We do not support the new language that reduces the frequency of these updates. The statutory language states that 'the department shall update the list at least annually'. We ask that the Department amend the regulatory text to provide for CMC list updates no less than once every 12 months and also to specify updates should be done on an ad hoc basis, as needed to reflect the statutory requirements behind the CMC list determinations

Response to B-48-3

CalRecycle rejects the comment. With regard to the assertion that the proposed regulation "reduces the frequency of these updates," the commenter is incorrect. Section 18980.2.5 incorporates the minimum frequency required by each statutory provision cited. Regarding the suggestion that the regulations reflect an ad hoc basis for providing updates, no change is appropriate because the proposed regulations do not restrict CalRecycle from revising the CMC list on an "ad hoc basis," and the proposed standard—that such revisions should be done "as needed"—is vague and impractical.

Comment B-48-4

Article 3-Section 18980.3.3. Eligibility for Being Labeled "Compostable"

We support 18980.3.3(b)(5)(A) as drafted and appreciate the Department's removal of repetitive and problematic language around the definition of 'desirable organic waste'.

Response to B-48-4

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-48-5

Article 4- Responsible End Market Criteria - § 18980.4(a)(4)(B) and § 18980.4(a)(4)(C)

Consistent with our previous comments, we are concerned that the statutory language around Responsible End Markets (REMs) for compostable covered products will lead to

implementation challenges. These provisions fail to recognize the overs generated in the industrial composting process. These overs are typical byproducts of composting and are materials that are typically sent to landfill. Overs are simply part of the process, and may include compostable products, food waste, other organic matter, and contaminants like rubber, glass, or traditional plastic products that end up in the compost pile.

Rather than revise the regulatory criteria around REMs to reflect the overs generated by the composting process, the Department is proposing to establish a separate carve-out for a subset of certified compostable products based on their material composition. The language in §18980.4(a)(4)(B) explicitly restricts an entity processing certified compostable covered products from disposing of any material, thereby disallowing any overs generation. Then, the language in § 18980.4(a)(4)(C) establishes a specific exemption from this requirement for compostable products that are made of paper and fiber only.

This differentiation between plastic and fiber/paper compostable products is not aligned with the intent of SB 54 which is to ensure that all certified compostable products, regardless of material type, are recovered and composted rather than landfilled. To this end, all covered compostable products should be held to the same REM requirements. Certified compostable products, both fiber/paper and plastic or fiber/paper products containing plastic, are designed and tested to international standards including ASTM D6400 and D6868 for safety through heavy metal and eco-toxicity analysis, and to completely disintegrate fully in industrial composting systems within constrained timeframes. These materials are processed together in composting operations and in the same manner and should be held to the same regulatory requirements. Comprehensive field testing conducted by Closed Loop Partners at Napa Recycling in CA, demonstrated conclusively that certified compostable plastics disintegrate the same or better than fiber/paper products in aerated static pile (ASP) systems like those commonly found in California. By holding both plastics and fiber/paper products to the same standards, the amount of overs generated from any non-disintegrated compostable products can be reduced. Furthermore, it would be infeasible for a composter to determine which overs contain plastic versus nonplastic products, especially in the case of fiber products that contain plastic binding agents or coatings.

We ask the Department to revise the language in §18980.4(a)(4)(B) to reflect a consistent approach and application of the Responsible End Market (REM) criteria across material types for compostable covered products:

(B) For items partially or wholly constituting plastic, any covered material or intentionally included in the process used to generate a recycled organic product must fully biologically decompose and be processed in a manner consistent with the management of other feedstocks to produce a marketable product which complies with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of

Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable. ~~The entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material and derivative material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).~~

Response to B-48-5

CalRecycle rejects this comment. See the responses to comments B-6-5, O-75-12, and O-83-5.

Comment B-48-6

Article 3- Documentation Requirements for Fiber Exemption

Compostable covered products that contain no plastics or polymers are able to secure an exemption from third-party certification requirements for compostability. The previous regulations appropriately established a series of requirements for these products seeking to obtain an exemption from third-party certification.

Fiber-based compostable packaging is likely to contain a variety of other materials beyond fiber in order to meet the needed performance requirements in many applications. These materials may include polymers, to act as binding agents and coatings, as well as inks, adhesives and dyes. By undergoing third party certification and testing, we can ensure the safety and performance of these products. The risk of allowing a blanket exemption for products that are asserting a fiber exemption is that consumers may be exposed to hazardous chemicals and PFAS without the guard rails established by making products undergo the certification and testing process. The earlier regulations established a requirement that any products undergo the third-party certification process and testing to ensure they are safe for use, or that manufacturers fully disclose the ingredients used in the manufacturing process and conduct laboratory testing to verify their claim that the product is made from exclusively fiber and contains no plastic.

We ask the Department to add back in the testing and ingredient disclosure requirements outlined in the previous regulatory proposal.

Response to B-48-6

CalRecycle rejects this comment for the reasons provided in response to comment B-38-5.

Comment B-48-7

Article 6- §18980.6.7 - Ecomodulated Fee and Fee Schedule

We request revision to §18980.6.7(a) and (b), allowing the PRO a two- year delay in implementing ecomodulated fees credits for plastics made from renewable materials.. Ecomodulated fees are an important mechanism to help new, more climate friendly products become more cost competitive. They are a core principle behind EPR and help facilitate a shift to more sustainable products.

There does not appear to be any statutory basis for this two-year delay in setting eco-modulated fee rates in §42053. We request that the PRO set eco-modulated fee reductions for renewable plastic covered materials at the same time as they release the initial program plan rather than delaying these provisions out alongside the base fee setting. Two years is an eternity for a new industry that needs the support of ecomodulated fees in order to obtain some level of cost competitiveness with the incumbent materials.

Response to B-48-7

CalRecycle rejects this comment. See the response to comment B-6-6.

Comment B-48-8

Article 6- §18980.6.7(i) Credit for Products that are Home Compostable

CJ Biomaterials asks that the regulations also incentivize home compostable products. Certified home compostable products present an important solution for managing packaging and waste at the local and individual level. We ask that the Department include a credit for packaging that is certified home compostable. A credit is justified for these products that are diverted into a backyard or community compost pile and are not an increased burden on the state to collect and manage.

We recommend adding a new subsection (3) as follows:
(3) In addition, plastic covered materials that meet the requirements of Section 42357 of the Public Resources Code to be labeled as "home compostable," which are also eligible to be labeled as "compostable" under these Regulations, shall receive a further reduced fee.

Response to B-48-8

CalRecycle rejects this comment. See the response to comment B-36-7.

Comment B-48-9

Article 11- Section 18980.11. Requirements for Local Jurisdictions and Recycling Services

We oppose the underlined new language in §18980.11(b). CalRecycle has explained that their intention is to clarify that local jurisdictions are not required to establish Responsible End Markets (REM). We recognize that local jurisdictions should not ultimately be accountable for the establishment of REMs and that the PRO should be liable for ensuring REMs are established through collaboration with local jurisdictions.

Local jurisdictions should not be subject to any enforcement actions or penalties as a result of the lack of existing REMs under SB 54. However, the language as drafted would establish a broad exemption allowance for local jurisdictions to pursue for materials that may not currently be part of the recycling/composting collection program or that require more focused effort by the PRO. This will allow local jurisdictions to obtain an exemption for products like compostable covered products which will make statewide uniformity and successful capture and processing of these materials challenging.

We believe the following amendment will satisfy the Department's objective without unintentionally creating a loophole that will allow challenging materials without existing REMs to be exempted from the local jurisdiction collection programs.

(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and directs it to recycling at responsible end markets, either bytransfers to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge <u>for grounds of applying for an extension or exemption in processes detailed in</u> ~~rendering inclusion of the covered material in the program impracticable for purposes of~~ subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

Response to B-48-9

Comment rejected. The suggested change would result in no change in the meaning of the proposed regulation's text. The change would merely restate—without any change in meaning—that absence of responsible end markets is sufficient to establish that compliance with Public Resources Code section 42060.5(a) is impracticable due to a local condition, circumstance, or challenge. To the extent the commenter intended the replacement text to mean that the absence of responsible end markets would be relevant but not necessarily sufficient to establish impracticability, the recommended change would still be inappropriate. Even assuming the recommended text could be read to have that meaning, the text would still be ambiguous on its face, and the only way it could be applied would still be to consider absence of responsible end markets sufficient to establish impracticability. "Absence" is an absolute condition that is either present or not present; it is not a matter of degree. Therefore, even if "absence" were to be considered one factor among many, the only logical way to assess it would be to determine whether the application establishes the requisite absence. Once that condition has been met, there would be no way to treat it as one factor among many that would not be arbitrary and capricious. Additional text would be necessary to explain how to consider it in that way, but the

commenter does not propose any.
CalRecycle further rejects this comment for the reasons provided in response to comment O-44-6.

Comment B-48-10

Home Compostable Products in the Regulatory Framework
We continue to advocate for the inclusion of home compostable products within the SB 54 framework and for the inclusion of specific allowances and considerations for these products. The Department has communicated their position that SB 54 does not call for the inclusion of home compostable products and that there is no basis for including home compostable products in the regulatory framework. We respectfully disagree with this assessment for the reasons outlined below.

SB 54 requires that all products be recyclable or labeled "compostable" per Chapter 5.7 and as such home compostable products should be recognized in the regulations and considered as a distinct and important subset of compostable covered products.

Under SB 54, all covered material must be (1) "recyclable in the state" or (2) "eligible for being labeled compostable in accordance with Chapter 5.7." See PRC § 42050(b). Throughout the statute, compostability is repeatedly referenced in conjunction with recyclability, and in some cases given special attention to encourage compostability as a critical part of the Legislature's vision for waste diversion. Section 42050 mandates a two-pronged plan where "recyclable" and "compostable" are the two equal tools available for implementing this plan.

Meanwhile, Chapter 5.7 of the Public Resources Code, which supplies the statutory anchor for SB 54's statements on compostability, encompasses two overlapping but distinct forms of compostable products: industrial compostable and home compostable. Because home composting favors inherently biodegradable polymers that are more susceptible to microbial activity as opposed to the hydrolysis that occurs in industrial composting, products labeled as "home compostable" must meet more stringent criteria than for "compostable" products, i.e., those that are suitable for industrial composting. The reference in SB 54's section 42050(b) to "eligible for being labeled compostable" therefore was intended, in context, to include products that are eligible for being labeled either "compostable" or "home compostable." Further evidence of this intent is found in SB 1046, which was passed during the same legislative session as AB 1201 and is now codified under Public Resources Code Section 42281.2. That law provides that a compostable bag can be either "compostable" or "home compostable" pursuant to Section 42357 – no preferential treatment is given to one over the other.

Home composting is appropriate only for a small subset of products that are certified to break down in a home composting system. These products offer an important alternative for brands and consumers who want to ensure end-of-life management of their products.

Companies serving food will be especially constrained in meeting recycling targets under the new regulations. For producers of single-use foodware (such as utensils, straws, plates, and cups), and in the case of film applications, compostability will be the primary means of compliance. To realize these ambitious targets, these companies need to be able to use all material types which includes home compostable products.

Further supporting a clear and sanctioned pathway for home compostable products is the Biodegradable Product Institute (BPI)'s September 2025 launch of a new Commercial & Home Compostable Certification. This certification represents a US-based home compostability certification and will hold products to the same high standards for compostability and safety at both lower temperatures such as in a home compost pile and at those conditions needed for commercial facilities. Applications for this new certification will open on December 1, 2025.

Limiting the end-of-life pathways for a home compostable product to industrial composting sites runs contrary to the ultimate objectives of SB 54, particularly while we are very early in efforts to build out industrial composting acceptance and infrastructure across the state. Home composting needs to be preserved as a pathway, even if short term, available to California consumers, communities and companies.

We ask the Department to reconsider their position and revise the regulations to effectively manage home compostable products.

Thank you for the opportunity to provide comments. Please do not hesitate to reach out if we can provide any additional information or clarification.

Response to B-48-10

CalRecycle rejects this comment, which misquotes PRC section 42050(b). That provision states that covered material must be recyclable or "eligible for being labeled 'compostable' in accordance with Chapter 5.7 (commencing with Section 42355)." Without explanation, this comment quotes that provision without placing "compostable" within quotation marks. That omission elides an obvious textual feature of Chapter 5.7, which consistently uses the terms "compostable" and "home compostable" separately, within separate quotation marks, to refer to two different types of labels subject to different legal requirements. The commenter's interpretation of the former term as incorporating the latter is therefore textually wrong. It also disregards the clear implication of the Legislature's choice to expressly incorporate only one of the two terms in the SB 54 context. Moreover, even if PRC section 42050(b) did not place the word "compostable" within quotation marks, the commenter's interpretation would still be untenable. Statute makes no reference to home-compostable materials even though, the commenter's own admission, they must meet different criteria than materials composted industrially. Given the drastically different technical and infrastructural needs for materials to be "home" compostable instead of just compostable industrially, it is not reasonable to assume that the Legislature decided to just ignore the former.

The contrary interpretation would have the absurd result that home compost piles would be considered within the definition of "responsible end markets," defined in Public Resources Code section 42041(ad) as a "materials market" that operate in a way that "benefits the environment and minimizes risks to public health and worker health and safety." That characterization of consumers' backyard composting operations is plainly unfeasible and could not reasonably have been intended by the Legislature. Nor could a PRO or Independent Producer possibly account for home compost piles, individually assess whether they satisfy criteria to be considered responsible end markets, or, more generally, assess the degree to which consumers actually use so-called "home compostable" goods in home compost piles rather than dispose of them.

B-49: Amy's Kitchen, LLC (Renaud des Rosiers)

Comment B-49-1

Thank you for having me. My name is Renaud des Rosiers and I'm the Director of Sustainability at Amy's Kitchen. For those of you who might not know Amy's I should mention that we're a beloved California company, rooted in Petaluma, and are one of the largest producers of organic, vegetarian prepared meals. We make over 200 frozen entrees, burritos, pizzas, and snacks as well as canned soups and chilies. We're family owned, mission driven, and committed to always striving toward more sustainable operations in a material way, beyond the performative incrementalism that is so common in corporate sustainability platforms.

I'm not here to go deeply into any of the technical issues in the current draft as there are many voices here for that purpose. Instead, I want to share a perspective about our sustainable packaging journey, our concerns about where this process appears to be headed, and to urge you to ensure this rulemaking preserves the original intent of the statute by leaving broad room for compostable packaging as a compliance pathway for brands like Amy's—who are trying to substantively lead the transformation to a fossil-plastic-free sustainable packaging future—rather than ineffectively tinkering on the margins of a deeply flawed incumbent system while further entrenching the conventional plastics the law purports to be working to reduce.

I personally have been leading Amy's sustainable packaging R&D journey for close to 10 years and am proud to report that over that time, we've made significant strides and have become a driving force toward the creation of innovative, renewable, plant-based circular packaging.

Our intent has always been to develop a proof of concept for a truly sustainable frozen meal assembly that we share broadly with our peers to transform the industry rather than trying to gain a competitive advantage through a marketing claim.

Right now, our frozen food packaging is mostly fiber based but has a plastic lining for grease resistance and a film-plastic overwrap to provide shelf life and ensure we're delivering safe food to our consumers.

The long-term goal of our sustainable packaging work has been to replace both of those conventional fossil plastic layers with plant-based alternatives. I'd say we're about 75% of the way through that journey, but without policy support from our home state, we won't be able to get to the finish line. In fact, we've been in a holding pattern through the SB54 rulemaking process due to the threats we've seen to the compostable products compliance pathway in the conversations to date.

I want to highlight a few key insights that I believe the committee has not yet given the attention they deserve and highlight what continuing to ignore these realities would mean for Amy's and other innovative companies working toward sustainable packaging if SB54 doesn't broadly accept compostable packaging as intended in the original statute.

• FUNCTIONALITY MATTERS—The idea that "unlined fiber-only" is a suitable compliance pathway for compostable products is a fantasy. Functional barrier properties and other packaging engineering requirements are a reality of our modern food system that cannot simply be wished away.
o In reality, the lack of functional properties including grease, water, and oxygen barriers mean that unlined fiber is unsuitable for most categories of food packaging, including food service ware. Its use would lead to a catastrophic failure of packaging systems and result in an exponential increase in food waste or require the creation of significant exemptions for fossil plastics to provide the needed functionality. Even many existing categories offered in fiber-only options, like paper straws, are not viable as they are rejected by a vast majority of the public—*including advocates on the plastic reduction issue*—due to their lack of functionality.
o And humility requires that this committee recognize the impossibility of telling the people of California they cannot have their morning coffee, occasional takeout dinner, frozen foods, granola bars, and chips. These packaging formats can be replaced but not without the use of a functional alternative. Failing to acknowledge this reality would result in a public revolt as people's daily lives are materially affected by a ban without a plan.

• COMPOSTABLES PROVIDE THE ONLY VIABLE ALTERNATIVE TO FILM PLASTICS—Many categories of flexible materials including food trays, films, multi-material laminates, most food service ware, and other small format packaging simply cannot be replaced by recyclable options either today or in the future. *Innovative, renewable, plant based, circular compostable products provide the only functional alternative to these categories*.
o The recycling system is already deeply burdened and only marginally economically viable. Broad-based collection of film plastic, food service ware, and small format items is a fallacy that will never be effective in terms of function, environmental benefit, or economic viability.

o Though recycling is often thought of uncritically as a virtue in all circumstances, the reality is *that there is a vast difference between the environmental and economic value in recycling rigid formats and dry fibers versus the environmental and economic cost of collecting film plastics* in the recycling system. Doing something that has no financial or social value, only to build negative-value recycling bales that have no market is a fool's errand.
o Though it goes against the mantra of *recycling everything regardless of the financial and environmental cost of doing so,* this committee should acknowledge that some materials, like thin films and wet, food-associated foodservice ware, are actually best managed outside the recycling system. For these marginal materials, the desirable management outcome is containment (to avoid leakage to the environment), dematerialization, and ideally, contribution to healthy soils (when collected in compost).

• COMPOSTABLES HAVE VALUE EVEN AS COLLECTION COMES ONLINE—The conversations around collection of compostables in this committee over the past two years represents a good example of *the perfect being the enemy of the good*. While it is true that the loudest composter voices from the California Compost Coalition do not currently want to accept compostable products, focusing only on that shortsighted reality ignores several of the meaningful benefits of compostables.
o Many composters across the country have successfully accepted compostable products for years while producing high quality compost, recognizing compostables' value in helping citizens collect and divert food scraps.
o Even when not collected in composting, compostables significantly reduce reliance on fossil plastics in a way no other material class can come close to.
o Compostables offer a significant advantage to conventional fossil plastics when mismanaged. While context and specifics vary greatly, a reasonable approximation is that *compostables offer a one to two order of magnitude advantage to conventional plastics in terms of non-persistence in the environment*. While not the intended pathway, we know systems do fail and when that happens, a mismanaged compostable material is likely to persist on the order of 1 to 10 years in the environment (for PHA and PLA respectively) versus perhaps 100 years for conventional plastic like HDPE.

• REMOVING THE COMPOSTABLE COMPLIANCE PATHWAY WILL RESULT IN MORE PLASTIC—In a deeply cynical possibility, rulemaking that disallows the use of functional compostable products would result in the so called "plastic pollution reduction act" forcing Amy's *into rigid plastic thermoform meal trays for compliance reasons* ***increasing our plastic use approximately tenfold***. If this committee is serious about its commitment to the spirit of SB54, it must avoid stifling innovation around the one form of packaging that has the potential to materially replace a broad set of categories which can otherwise only be delivered using conventional fossil plastics.

Beyond abandoning the spirit of the statute—*which explicitly calls for all packaging sold in the state of California to be recyclable compostable or reusable*—failing to create a significant role for compostable products would have the sinister effect of locking in the current failed system and doubling down on conventional plastics, contrary to the very intent of the law.

Thank you for your time.

Response to B-49-1

Comment rejected. To the extent required, CalRecycle has responded to the issues raised in this comment in its response to comments B-51-1 through B-51-4, which this commenter submitted and are, collectively, substantively the same as this comment.

B-50: Smart Planet Technologies (Will Lorenzi)

Comment B-50-1

I write as President of Smart Planet Technologies, Inc., a California-based innovator in sustainable paper-based packaging materials, including EarthCoating® and HyperBarrier. Our company is dedicated to materials innovation for reducing plastic use, increasing fiber recovery, and enabling packaging that is both functional and recyclable in real-world infrastructure. We strongly support SB 54's overarching ambition to reduce plastic waste, improve recyclability, and build a circular economy for packaging in California. With that shared goal in mind, this comment addresses three key focus areas:
1. Recognition of PF5P / PF10P / PF15P / PF17P — a positive step forward that should be fully acknowledged and built upon.
2. The problem of compostability — why it fails in practice, burdens composters, and undermines recycling.
3. The missing innovation on-ramp — why SB 54 needs a framework to encourage verifiably recyclable packaging innovations, not just regulate existing materials. We also include Appendix A, summarizing the published statement from Oregon's composters (available at:
https://oregonrecyclers.org/sites/oregonrecyclers.org//files/message_from_oregon_composters_o n_no_serviceware.pdf), which reinforces our conclusions with real-world operational evidence.

Response to B-50-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail. (See comments B-50-2 through B-50-4).

Comment B-50-2

Focus Area 1 – Recognition of PF5P, PF10P, PF15P, PF17P
We commend CalRecycle for the September 2025 update to the Covered Material Categories
(CMCs), which now distinguishes between:

• PF5P – Gable-top cartons (milk, juice, cream).
• PF10P – Single-sided coated paperboard (e.g., hot drink cups, many foodservice containers.).
• PF15P – Aseptic cartons (multi-material formats with foil layers, such as Tetra Pak-style
soups and juices).
• PF17P – Double-sided coated paperboard (dual-laminated formats such as some soup
containers, ice cream cups, and heavy-duty trays).
This refinement is a major positive development.
Why it matters:
• Accuracy: These categories reflect real-world technical differences in recyclability and infrastructure compatibility.
• Fairness: By distinguishing PF10P from PF17P, CalRecycle allows recyclable singlesided
innovations to be fairly evaluated, without being lumped in with dual-sided
laminates that are much harder to recycle.
• Market signals: This separation creates clearer signals for eco-modulation, ensuring producers are incentivized to choose designs that align with recycling infrastructure.

We encourage CalRecycle to continue moving in this direction - recognizing that not all coated
paperboard is created equal, and that recyclability depends on construction, not merely the
presence of a coating.

Response to B-50-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment B-50-3

Focus Area 2 – The Problem of Compostability
While recyclability is an investment in circularity, compostability has proven to be an illusion in
practice. We urge CalRecycle to recommend legislative updates to remove compostable
packaging as a compliance pathway under SB 54.

A. Experience from Other Programs
• The UK's Recyclability Assessment Methodology (RAM) and the EU's Packaging and Packaging Waste Regulation (PPWR) have both abandoned compostability as a recognized compliance route.
• These programs adapted after years of evidence showing compostable packaging consistently fails to deliver diversion or environmental benefit.
• SB 54, however, locked compostability into statute with no flexibility to recalibrate, creating a policy misalignment with global best practice.

B. Oregon Composters' Statement

Oregon composters have published a detailed statement identifying nine systemic failures of compostable serviceware: incomplete degradation, contamination, reduced compost quality, chemical concerns, higher operating costs, and more. Their message was clear: compostable packaging undermines composting rather than supports it. A summary of these findings is attached as Appendix A, and the full text is available online at: https://oregonrecyclers.org/sites/oregonrecyclers.org//files/message_from_oregon_composters_on_no_serviceware.pdf.

C. California Case Studies

The same failures are visible in California:

• San Mateo County:

My understanding is that San Mateo County required coffee shops to use compostable cups that cost roughly 1.5 times more than conventional cups. My understanding is that these cups, despite being ASTM-certified, did not degrade in the county's composting facilities (which operate on 2–3 week cycles), and were ultimately screened out and landfilled.

• San Francisco:

My understanding is that San Francisco's composting program accepts poly-lined paper cups as "compostables," even though such cups do not degrade. My understanding is that they are sifted out during processing and sent to landfill, creating costs without environmental benefit.

In both cases, the outcome is identical: higher costs, higher burdens, and cups in the landfill.

D. ASTM vs. Real World

• ASTM D6400 / D6868 certifications allow up to 180 days (six months) for degradation in laboratory conditions.

• California composters run 14–21 day active composting cycles.

• The mismatch ensures compostable cups cannot degrade in practice, no matter what certification they carry.

SB 1335 recognized this problem. It only accepted compostable packaging that could actually degrade in real California facilities. SB 54 ignored this precedent and reverted to ASTM standards alone.

E. The Double Standard

• Recycling under SB 54 requires proof: at least 60% statewide collection rates and evidence of actual recycling.

• Compostability requires only ASTM certification — no proof of collection, no proof of actual composting.
• This double standard incentivizes producers to choose compostables, even though California has no infrastructure to handle them.

F. Cost Driver in SB 54
When the Governor rejected CalRecycle's initial draft regulations earlier this year due to high
costs on families, one cost-reduction measure was scaling back composting infrastructure
investment. This illustrates the enormous cost burden compostability imposes. Continuing to
support compostables in SB 54 is wasteful and unsustainable.

G. Recycling Builds Value, Composting Destroys It
• Recycling recovers fiber, enabling reuse in new paper products and extending material life.
• Composting destroys fiber value after a single use, while contaminating compost systems
meant for food scraps.
• Composting packaging is therefore irrational — it wastes resources and undermines both
recycling and composting.

H. Cross-Contamination
By allowing both recyclable and compostable packaging in the market:
• Recyclables contaminate compost streams (they will not degrade).
• Compostables contaminate recycling streams (they cannot be pulped).
The result is two broken systems instead of one strong one.

Conclusion for Focus Area 2: Compostability as a compliance pathway should be removed from
SB 54. California should align with other EPR programs the UK and EU that evolved their EPR
initiatives to dedicating all resources to recyclability, not illusions of compostability that fail in
practice.

Response to B-50-3

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. As the comment recognizes, the proposed revisions to SB 54 would require a legislative rather than regulatory revision, which is outside the scope of this rulemaking.

Comment B-50-4

Focus Area 3 – The Missing Innovation On-Ramp
California is a world leader in innovation, yet SB 54 does not provide a pathway for innovation to succeed.

A. The Problem
SB 54 defines recyclability only by what is recycled today. This locks in the current system-including its failures — and does not allow new materials or designs to be recognized or incentivized, even when they are demonstrably compatible with paper recycling equipment and processes.

B. Coated Paper Packaging Categories and Their Challenges
The four coated paper categories - PF5P (gable-top cartons), PF10P (single-sided coated paperboard such as hot drink cups), PF15P (aseptic cartons), and PF17P (double-sided coated paperboard) — have been historically problematic for paper recycling, for different reasons and at different levels of difficulty.

Importantly, in standard paper grades commonly used by mills (e.g., OCC, DLK, mixed paper), poly-coated fiber in general is typically treated as a prohibitive or outthrow because plastic linings interfere with repulping and reduce yield. So, it is valuable to segregate barrier-coated materials into categories, but innovation in materials within these categories need to be incentivized to make these categories truly valuable to recycle.

C. Why an Innovation On-Ramp Is Essential
Despite these historic problems, there are innovations in materials and coatings — some still containing plastic — that are fully compatible with conventional paper recycling systems and can solve the recycling challenge within each PF category (e.g., demonstrated repulpability, stable fiber yield, manageable stickies, and fit within existing screens/cleaners).

However, without a formal innovation on-ramp and eco-modulation that rewards verifiable recyclability, these improved designs will not gain a foothold. Under the current SB 54 framework, they are commingled with conventional problematic designs and face the same penalties and market perceptions, which hinders adoption and slows improvements across the entire stream.

D. California’s Global Role
California is where the world looks for innovation, and SB 54 is influencing EPR programs elsewhere. Innovations in materials and processes should be proven and scaled in California. The state’s EPR framework should prioritize innovation, not sideline it. An innovation on-ramp -with clear, performance-based criteria and fee differentiation — is the quickest way to move coated fiber packaging from “historically problematic” to consistently recyclable.

Conclusion for Focus Area 3: CalRecycle should create and recommend a structured innovation on-ramp so verifiably recyclable designs within PF5P, PF10P, PF15P, and PF17P can demonstrate performance, qualify for differentiated (lower) fees, and scale in the marketplace. Without this, California risks entrenching the status quo and missing a prime opportunity to lead on solutions.

Response to B-50-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, 42060, and 42061, and no change is necessary to the implementation of the Act. This comment raises general objections to the statutory framework; it does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment objects to the Act's definition of "recyclability," for instance, PRC section 42061(c) specifically provides that covered material is deemed recyclable for the purpose of the Act if it meets the requirements of Section 17989.2 of Title 14 of the California Code of Regulations, and PRC section 42355.51. CalRecycle does not have any authority to modify this statutory definition in the proposed regulations. Moreover, to the extent this comment recommends an on-ramp for covered materials to demonstrate recyclability, such an on-ramp is already established by PRC section 42061(a)(3)(B) and implemented by section 18980.3.1 of the proposed regulations. Finally, to the extent this comment recommends prioritizing eco-modulation and incentivizing innovation for material recyclability, such efforts are already addressed in the Act and proposed regulations. For instance, see PRC sections 42053(e) (eco-modulation) and 42051.1(i)(3)(D) (innovation) and sections 18980.6.7(f) (eco-modulation) and 18980.4.3 (innovation) of the proposed regulations. These provisions therefore sufficiently provide for these efforts in a manner consistent with the requirements and limitations of the Act; no further change to the proposed regulations is necessary.

Comment B-50-5

Conclusion and Request
Smart Planet Technologies respectfully requests that CalRecycle:

1. Fully recognize and build upon the positive separation of PF5P, PF10P, PF15P, and PF17P.

2. Recommend legislative updates to remove compostability as a compliance pathway under SB 54, for the reasons detailed above.

3. Create an innovation on-ramp to ensure that eco-modulation rewards solutions that are compatible with recycling systems, even if not yet at full scale.

We recognize that some of the changes discussed here — in particular, the embedded statutory requirements around compostability — may be beyond the scope of what CalRecycle can alter directly through regulation. For that reason, this same letter will

also be shared with the Governor’s Office and with the editorial boards of the Los Angeles Times, the San Francisco Chronicle, and the Sacramento Bee, in order to raise public and policy awareness where legislative advocacy may ultimately be required.

California should not continue to support the illusion of compostability. Instead, all resources should be directed to building a true circular economy based on recyclability, material recovery, and innovation.

We thank CalRecycle for its leadership, and we stand ready to contribute technical expertise, share performance data, and collaborate on building the solutions that California — and the world — urgently need

Response to B-50-5

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately (see comments B-50-2 through B-50-4).

B-51: Amy's Kitchen (Renaud des Rosiers)

Comment B-51-1

Thank you for having me.· My name is Renaud des Rosiers, and I'm the director of sustainability at Amy's Kitchen.

For those of you who might not know Amy's, I should mention that we're a beloved California company rooted in Petaluma and are one of the largest producers of organic vegetarian prepared meals.· We make over 200 frozen entrees, burritos, pizzas and snacks, as well as canned soups and chilis.

We're family-owned, mission-driven, and committed to always striving towards more sustainable operations in a material way beyond the performative incrementalism that is so common in corporate sustainability platforms.

I'm not here to go deeply into any of the technical issues in the current draft, as there are many voices here for that purpose.· Instead, I want to share a perspective about our sustainable packaging journey, our concerns about where this process appears to be headed, and to urge you to ensure this rulemaking preserves the original intent of the statute by leaving broad room for compostable packaging as a compliance pathway for brands like Amy's who are trying to substantively lead the transformation to a fossil plastic free sustainable packaging future rather than ineffectively tinkering on the margins of a deeply flawed, incumbent system while further entrenching the conventional plastics the law purports to be working to reduce.

I personally have been leading Amy's sustainable packaging R&D journey for close to ten years and am proud to report that over that time, we've made significant strides and

have become a driving force towards the creation of innovation, renewable, plant-based circular packaging.

Our intent has always been to develop a proof of concept for a truly sustainable frozen meal assembly that we share broadly with our peers to transform the industry rather than trying to gain a competitive advantage through a marketing claim.

Right now, our frozen food packaging is mostly fiber-based, but has a plastic lining for grease resistance and a film plastic overwrap to provide shelf life and ensure we're delivering food safely to consumers.· This is essential to getting the product to market.

The long-term goal of our sustainable packaging work has been to replace both of those conventional fossil-plastic layers with plant-based alternatives.· I'd say we're about 75 percent of the way through the journey.

But without policy support from our home state, we won't be able to get to the finish line.· In fact, we've been in a holding pattern through the SB 54 rulemaking process due to the threats we've seen to the compostable products compliance pathway in the conversations to date.

Response to B-51-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

Comment B-51-2

I want to highlight a few key insights that I believe the committee has not yet given the attention they deserve and highlight what continuing to ignore these realities would mean for Amy's and other innovative companies working towards sustainable packaging if SB 54 doesn't broadly accept compostable packaging as intended in the original statute.

First, I want to say that functionality really does matter.· The idea that unlined, fiber-only is a suitable compliance pathway for compostable products is laughable.· Functional barrier properties and other packaging engineering requirements are a reality of our modern food system that cannot simply be wished away.

In reality, the lack of functional properties including grease, water, and oxygen barriers mean that unlined fiber is unsuitable for most categories of food packaging, including food service ware.· Its use would lead to a catastrophic failure of packaging systems and result in an exponential increase in food waste or, as we've seen already requested today, require the creation of significant exemptions for fossil plastics to provide the needed functionality.

Even many existing categories offered in fiber-only options, like paper straws, are not viable, as they are rejected by a vast majority of the public, including advocates on the plastic reduction issue, due to their lack of functionality.

And humility requires that this committee recognize the impossibility of telling the people of California they cannot have their morning coffee, occasional takeout dinner, frozen foods, granola bars, and chips.· These packaging formats can be replaced, but not without the use of a functional alternative. Failing to acknowledge this reality would result in a
public revolt as people's lives are materially affected by a ban without a plan.

Next, I want to highlight that compostables provide the only viable alternative to film plastics. Many categories of flexible materials, including food trays, films, multi-material laminates, most food service ware, and other small-format packaging simply cannot be replaced by recyclable options either today or in the future.· Innovative, renewable, plant-based, circular, compostable products provide the only functional alternative to these categories.

The recycling system is already deeply burdened and only marginally economically viable. Broad-based collection of film plastic, food service ware, and small-format items is a fallacy that will never been effective in terms of function, environmental benefit, or economic viability.

And though recycling is often thought of uncritically as a virtue in all circumstances, the reality is that there's a vast difference between the environmental and economic value in recycling rigid formats and dry fibers versus the environmental and economic cost of collecting film plastics in the recycling system.· Doing something that has no financial or social value only to build a negative value recycling bail that has no market is a fool's errand.

And though it goes against the mantra of recycling everything regardless of the financial and environmental cost of doing so, this committee should acknowledge that some materials, like thin films and wet food-associated food service ware, are actually best managed outside the recycling system.· For these marginal materials, the desirable management outcome is containment to avoid leakage to the environment, dematerialization, and ideally, contribution to healthy soils when collected in compost.

Finally, I want to add that compostables have value even as collection comes online.· The conversations around collection of compostables in this committee over the past two years represents a good example of the perfect being the enemy of the good.

While it is true that the loudest composter voices from the California Compost Coalition do not currently want to accept compostable products, focusing only on the short-sighted -- excuse me -- focusing only on that short-sighted reality ignore several of the meaningful benefits of compostables.

First, many composters across the country have successfully accepted compostable products for years while producing high-quality compost and recognizing compostables' value in helping citizens collect and divert food scraps.· Even when not collected in composting, compostables significantly reduce reliance on fossil fuels throughout their life cycle in a way that no other material class can come close to.

Response to B-51-2

Comment rejected. The commenter offers broad concern over the various ways statute, as a technical matter, allows materials to achieve compliance (apparently with respect to the requirements of Public Resources Code section 42050). The commenter explains the technical reasons why, in the commenter's opinion, certain compliance pathways are not viable for certain materials. This comment, however, is directed at technical problems with the compliance pathways established in statute—the proposed regulations only implement such pathways—and their respective merits. The commenter also offers an analysis of various issues related to the end-of-life management of different materials. Because the comment does not address the proposed regulations themselves, much less suggest changes to them, no further response is required.

Comment B-51-3

And finally, compostables offer a significant advantage to conventional fossil plastics even when mismanaged.· While context and specifics vary greatly, a reasonable approximation is that compostables offer a one to two order of magnitude advantage to conventional plastics in terms of nonpersistent in the environment.

While not intended -- while not the intended pathway, we know systems do fail.· And when that happens, a mismanaged compostable material is likely to persist on the order of one to ten years in the environment for PHA and PLA, respectively, versus perhaps 100 years or more for conventional plastics like HDPE.

Response to B-51-3

Comment rejected. The comment provides background related to the other portions of the commenter's submission but does contain suggested changes to the proposed regulations or objections related to the rulemaking process.

Comment B-51-4

And I want to add one more thing.· Removing the compostable compliance pathway will result in more plastic.· In a deeply cynical possibility, rulemaking that disallows the use of functional compostable products would result in the so-called Plastic Pollution Reduction Act forcing Amy's into rigid, plastic, thermoformed meal trays for compliance reasons, increasing our plastic use approximately tenfold.

If this committee is serious about its commitment to the spirit of SB 54, it must avoid stifling innovation around the one form of packaging that has the potential to materially

replace a broad set of categories which can otherwise only be delivered using conventional fossil plastics.

Beyond abandoning the spirit of the statute, which explicitly calls for all packaging sold in the state of California to be recyclable, compostable, or reusable, failing to create a significant role for compostable products would have the sinister effect of locking in the current failed system and doubling down on conventional plastics, contrary to the very intent of the law.

Response to B-51-4

Comment rejected. The comment provides background related to the other portions of the commenter's submission but does contain suggested changes to the proposed regulations or objections related to the rulemaking process. To the extent the commenter's objection that the proposed rulemaking "disallows the use of functional compostable plastics" requires a response, CalRecycle has provided one in response to comment B-51-2. Also, if the proposed regulation have the effect that the commenter alleges, that result necessarily flows from the mandatory criteria set forth in Public Resources Code section 42357 and surrounding sections. CalRecycle has no discretion to ignore or modify those criteria.

B-52: Bunzl Distribution (Krista Durlas)

Comment B-52-1

Bunzl is a large distributor of essential business supplies.· We sit in the middle of the supply chain between manufacturers and the businesses that use their products.· While we don't control either side, we are well-positioned to influence both.· And we help our customers improve packaging and food service ware with minimal disruption to their operations and costs.

We are going to follow up with more detailed comments today later, but we want to focus in on section 18980.1.1, which is the in-the-state aspect of producer determination.

We recognize CalRecycle for your leadership in advancing packaging sustainability and your continued engagement with the stakeholders throughout the rulemaking process.· We also value the implementation guidance that CalRecycle has provided to date to help businesses account for materials and their components.

That said, with the reporting deadline approaching quickly, we are still unclear about which specific materials and components fall under our reporting obligation.· We work with over 1,000 suppliers, and one challenge that we find -- that we face is that businesses generally don't share complete location information with one another, even when they're in long-term business relationships.· That makes it difficult to impossible to determine which upstream suppliers are in the state for EPR purposes.

The proposed regulations don't resolve this issue for businesses with complex or global supply chains.· It's nearly impossible to determine the jurisdictional status of our upstream suppliers.· And without that clarity, we can't confidently determine our own reporting obligations.

In page 4 of CalRecycle's discussion document back from May 27th in the informal rulemaking workshop, CalRecycle said that they were going to -- they acknowledged the complexity.· And they said that they were going to provide interpretive guidance and advice on how to resolve this.· And it's -- you know, the deadline is here, and we still don't have clarification.

So given these challenges, we respectively urge CalRecycle to revise the in-state test to make it operationably feasible for businesses, whether or not the rule is revised.· We also encourage the Agency to provide practical tools, clear examples, and decision-making guidance to help regulated entities interpret and comply with requirements.

Specifically, we recommend -- you know, there could be a list.· There could be a list of who is in the state.· That would be helpful.· And otherwise, you know, just any interpretive guidance with clear examples, decision trees.

Or in lieu of that, please provide safe harbor provisions for getting through the period where the uncertainty persists, and to consider enforcement leniency or a compliance grace period until this is resolved.

And with that, we just thank you for the opportunity to comment.· And like I said, we'll follow up with more comments in writing later.

Response to B-52-1

CalRecycle rejects this comment. With regard to the commenter's request that CalRecycle substitute a list of entities that are in the state in lieu of providing the standard by which an entity might be judged to be in the state, the comment is rejected because the purpose of the regulation is to provide rules of general application. With regard to the comment's suggestion that CalRecycle provide interpretive guidance in the manner described in the May 2025 materials or by the exercise of enforcement discretion, the comment is rejected because it does not pertain to the present rulemaking. In its May 2025 discussion document, CalRecycle explained its intention to "publish illustrations (outside this formal rulemaking)."

B-53: Atrium 916 (Shira Lane)

Comment B-53-1

Hi.· Shira Lane with Atrium 916. We're a creative innovation center for sustainability. I just want to put a quick comment on reuse.

I, too, with the many comments that have been heard here feel that with reuse, I wish there was some kind of threshold so people knew, like, oh, if I did this, I meet the reuse standard.

Right now it's pretty vague.· And as mentioned, I'm worried about the thicker plastic bag issue.· So just putting that out there.· I would like to see reuse take over the world.· But, yeah.· So, thank you.

And also, I wish these microphones worked better.· Didn't we just, kind of, fix these up?

So, thank you.

Response to B-53-1

CalRecycle rejects this comment for the same reasons provided in its response to O-75-3.

O-1: Trash4tokens & Trashtalk (Clare Swithebank-Bowman)

Comment O-1-1

I strongly support the intent of SB 54 to advance producer responsibility, reduce plastic pollution, and accelerate California's transition to a circular economy. However, I urge CalRecycle to strengthen these permanent regulations by embedding digital transparency and global policy alignment that will ensure accountability across all levels of the packaging and recycling system.

Response to O-1-1

Comment rejected. The comment only makes a vague suggestion to address digital transparency and global policy alignment but does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-1-2

1. Adoption of the TrashTalk App for Full Transparency
A critical gap in the current system is the lack of real-time, standardized data collection across material recovery facilities (MRFs), businesses, and producers. I recommend that CalRecycle require or incentivize the adoption of tools such as the TrashTalk app across all MRFs, businesses, and Producer Responsibility Organizations (PROs).
The TrashTalk app is designed to track all packaging types—PET, LDPE, HDPE, glass, tin, multi-layered plastics, compostables, and more—providing verifiable, geo-tagged data on collection, separation, diversion, and repurposing. By using a single transparent platform:
• Producers can demonstrate compliance with SB 54 in real-time.
• MRFs can reduce contamination and increase material value.

• CalRecycle can monitor compliance efficiently, cutting administrative overhead.
• Consumers and communities can see transparent reporting on where their waste goes.
Universal adoption of a system like TrashTalk would give California global leadership in digital circular economy infrastructure, and set the precedent for transparency and accountability worldwide.

Response to O-1-2

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, and no change is necessary to the implementation of the Act. PRC section 42051.1(m)(4) requires a producer responsibility plan to include record maintenance protocols sufficient to demonstrate producers' compliance with the requirements of the plan and Act. Section 18980.6.8 of the proposed regulations implements this requirement by specifying the form, manner, and type of records that must be maintained. Moreover, PRC section 42051.1(c)(5) requires a producer responsibility plan to describe how covered material will be collected, processed, managed, and recycled in a manner consistent with the goals of the Act, including ensuring covered material collected for recycling will be transferred to viable responsible end markets. Among other requirements, sections 18980.4(a) and 18980.4.1 of the proposed regulations require producers to maintain sufficient records to demonstrate that covered materials are collected, processed, managed, and recycled in a manner consistent with the goals and requirements of the Act. These regulatory provisions require producers to maintain the necessary documentation to ensure full transparency and tracking to demonstrate compliance with the requirements of the Act. Producers and a PRO are welcome to utilize any technologies or means for tracking materials they choose, so long as such technologies or means comply with the requirements of the Act, proposed regulations, and other applicable laws. Therefore, CalRecycle declines to require the universal adoption of the referenced application, and no further change is necessary.

Comment O-1-3

2. Integration of International Maritime Code (IMDG) Amendment for Nurdles
Another overlooked driver of plastic pollution is the unchecked flow of plastic nurdles—the raw feedstock for virgin plastic production. Spills during transport, storage, and production contribute massively to microplastic contamination. The proposed amendment to the International Maritime Dangerous Goods (IMDG) Code seeks to classify nurdles as hazardous substances.
This classification would increase the cost of shipping virgin plastic pellets, creating a market correction that makes recycled and repurposed plastics more economically favorable. By explicitly recognizing and supporting the IMDG nurdle amendment in its regulatory framework, California can:
• Align state-level action with global maritime safety and pollution prevention.
• Drive market forces toward repurposing existing plastics in the environment.
• Support the development of domestic recycling and reuse infrastructure.

Response to O-1-3

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only raises vague concerns regarding nurdle pollution but does not suggest a specific change to the proposed regulations or raise an objection concerning the rulemaking process. Amending the International Maritime Dangerous Goods Code is outside the scope of this rulemaking.

Comment O-1-4

3. Strengthening Recycling Market Incentives
As long as virgin plastic remains artificially cheap, recycling markets will remain fragile. Linking SB 54's implementation with both digital transparency requirements (via tools like TrashTalk) and international policy mechanisms (like the IMDG amendment) will ensure that:
• True costs of virgin plastic are accounted for.
• Recycling and reuse become consistently profitable.
• California achieves and sustains the source reduction and recycling targets set by law.

Response to O-1-4

Comment rejected. The comment only makes a vague suggestion to address digital transparency and international policy mechanisms but does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-1-5

Conclusion
To achieve SB 54's ambitious goals, California must go beyond incremental improvements and implement systemic innovations. By requiring universal adoption of transparent digital tracking platforms such as the TrashTalk app, and by formally supporting the IMDG nurdle amendment, CalRecycle can ensure that California not only meets its statutory obligations but also leads the world in the fight against plastic pollution.
Thank you for considering these recommendations.

Response to O-1-5

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

O-2: Biodegradable Food Service and Earth To Go, Inc (Kevin Duffy)

Comment O-2-1

Looking to find out what the qualification is for the term reusable and compost able for the SB 54 regulation. I have a business in Hayward that sell both of these items.

Response to O-2-1

Comment rejected. CalRecycle cannot discern the meaning of this comment or identify any recommended change to the proposed regulations or objection concerning the rulemaking process. Accordingly, no response is required. To the extent the commenter intended to request that CalRecycle respond to a compliance question specific to the commenter, no response to such questions is appropriate in the rulemaking context.

O-3: HSR.health (Ajay Gupta)

Comment O-3-1

Overview

We respectfully submit this comment to endorse California's goal of achieving a circular economy through SB 54 and recommend the technical solutions that can substantially strengthen compliance, measurement, and health outcomes.

Response to O-3-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment O-3-2

Key Technology Recommenda ons to Achieve SB 54 Goals

• **Robust Monitoring:** Ensure geospatial tracking of ocean-bound and upstream plastic flows to fill a critical gap in measuring plastic reduction efforts, particularly in underserved and rural communities.

• **Public Plastic Portal**: Establish a publicly accessible dashboard or portal to enable realtime transparency into recycling rates, material recovery, and leakages, helping producers and Producer Responsibility Organizations (PROs) meet the law's ambitious **65% recycling rate and 25% source reduction** targets by 2032.

• **Health Risk Insights:** SB 54 directs mitigation funds toward both environmental and public health protection. We strongly recommend establishing a publicly accessible dashboard or portal to identify exposure hotspots and project health risks tied to plastic pollution—maximizing the **$5 billion fund's impact on vulnerable communities.**

Response to O-3-2

Comment rejected. This comment does not propose revisions to the proposed regulations. Rather, it recommends that CalRecycle undertake three projects (plastic waste monitoring, a public portal for publishing recycling rates, and a public portal concerning "exposure hotspots" and "health risks"), without

identifying any statutory provision that mandates or permits CalRecycle undertake them.

Comment O-3-3

Requirements for a Public Portal on Plastic Risk

A public portal will both help businesses and organizations adopt the provisions of SB 54, as well as raise statewide awareness of the issue of plastic pollution and movement towards a solution. A public portal should have the following features:

1. **Data-Driven Accountability**

o Capture real-time metrics on plastic flows and recyclability—a vital complement to mandated annual reporting.

2. **Equity-Focused Impact**

o Target investments and interventions to communities disproportionately affected by plastic pollution, aligning with SB 54's environmental justice objectives.

3. **Efficient and Effective Use of Funds**

o Identify locations where mitigation dollars from the Plastic Pollution Mitigation Fund can yield the greatest overall improvement in health and environment.

4. **Early Warning & Adaptive Management**

o Detect inefficiencies or emerging risks ahead of scheduled reviews—enabling corrective action before compliance deadlines.

Response to O-3-3

Comment rejected. No response is necessary because the comment does not concern the proposed regulations. Rather than recommend a change to the proposed regulations, the comment recommends parameters for a "public portal" project related for raising awareness of the issues related to SB 54.

Comment O-3-4

Suggested Regulatory Enhancements

To fully leverage these capabilities, we recommend the following additions to the proposed regulations:

- **Include Geospatial Monitoring Requirements**

Require the PRO to deploy technology systems to monitor and report plastic recovery progress with geographic precision, and that integrate with the public plastic portal or dashboard.

Response to O-3-4

Comment rejected. Requiring the PRO to deploy a monitoring system for the purpose of reporting on "recovery progress with geographic precision" is not within CalRecycle's authority under the statute.

Comment O-3-5

• **Mandate Health Risk Screening for Funded Projects**
Prioritize mitigation fund allocations for projects demonstrably reducing exposure risks in high burden areas (e.g., low income, vulnerable, or rural communities).

Response to O-3-5

Comment rejected. The Legislature, not CalRecycle, appropriates funds, and CalRecycle does not have authority to establish the Legislature's allocation priorities.

Comment O-3-6

• **Require Transparent, Publicly Available Metrics**
Publish recovery, recyclability, and exposure data to public, online dashboards, improving accountability and enabling community engagement.

Response to O-3-6

Comment rejected. The comment states the vague proposal, "[p]ublish recovery, recyclability, and exposure data to public, online dashboards." CalRecycle cannot discern what, if any, change to the proposed regulations this comment recommends. To the extent it proposes regulations requiring the PRO to develop a public resource concerning recycling infrastructure and health risks in the state, CalRecycle rejects that suggestion because statute does not authorize CalRecycle to impose such an obligation.

Comment O-3-7

- **Incentivize Innovation in Tracking & Remediation Technologies**

Recognize and support the scalability and long-term sustainability of applications, potentially through reduced producer fees or matching fund opportunities.

Response to O-3-7

Comment rejected. The comment states the vague proposal, "[r]ecognize and support the scalability and long-term sustainability of applications, potentially through reduced producer fees or matching fund opportunities." CalRecycle cannot discern what, if any, change to the proposed regulations this comment recommends. To the extent it proposes regulations dictating with specificity how the PRO creates its fee schedule or invests funds towards achieving its mandate, CalRecycle rejects that proposal because statute contemplates those granular details to be developed by the PRO and submitted to CalRecycle for approval as part of its producer responsibility plan.

Comment O-3-8

- **Leverage Plastic Credits to Fund Cleanup Activities**

The state of California should establish a requirement for plastic credits to offset plastic production and utilization throughout operations, including but not limited to manufacturing, distribution, or retail.

Response to O-3-8

Comment rejected. This comment proposes a "plastic credit" program that would require new legislation, not a change to the proposed regulations.

Comment O-3-9

Conclusion

We congratulate the State of California in taking bold action against the harm to the our shared environment and individual health caused by plastics. Integrating geospatial intelligence & health impact modeling into SB 54's framework offers a powerful, data-driven path to exceed sustainability and equity goals. We urge CalRecycle to incorporate these approaches into the final rulemaking and funding mechanisms. We appreciate the opportunity to contribute to California's leadership in plastic pollution reduction.

Response to O-3-9

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately (comments O-3-2 through I-3-8).

O-4: Santa Monica Democratic Club (Isabel Storey)

Comment O-4-1

California has an opportunity to greatly reduce plastic pollution scourging our state and set a national example for bold action to address the plastic waste crisis.

Santa Monica Democratic Club strongly endorsed SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, when it was first passed in California. If fully implemented, this landmark anti-plastic pollution law will reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians. However, the current draft regulations to implement the act greatly weaken the law, with broad exemptions for food products and weakened protections against a process known as "chemical recycling."

"Chemical recycling," sometimes called "advanced recycling," is intended to convert plastic waste into fuel or raw materials for new plastic, but it is mostly a new euphemism for an old and dirty practice: incineration. Plastics-to-fuel plants are not recycling, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. This is not a solution to the plastic waste crisis and should not be allowed in our state.

California should be a leader in protecting our communities from toxic pollutants and the current regulations do the opposite.

We urge strong implementation of SB 54 that reflects the intent of the law, which is to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

Response to O-4-1

CalRecycle rejects this comment for the reasons stated in response to comment I-6-1, I-19-1, I-25-1, and O-6-1.

O-5: Indivisible Westside Los Angeles (Isabel Storey)

Comment O-5-1

Indivisible Westside Los Angeles, a progressive advocacy group of nearly 800 members, writes in strong support of FULL IMPLEMENTATION of SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

We believe that California has an opportunity to greatly reduce the plastic pollution suffocating our state and set a national example for bold action to address the plastic waste crisis.

Our group endorsed SB 54 when the bill was first passed in California and opposes any changes to weaken it. If fully implemented, this landmark anti-plastic pollution law will reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians. However, the current draft regulations to implement the act greatly weaken the law, with broad exemptions for food products and weakened protections against a process known as "chemical recycling."

"Chemical recycling," sometimes called "advanced recycling," is intended to convert plastic waste into fuel or raw materials for new plastic, but it is mostly a new euphemism for an old and dirty practice: incineration. Plastics-to-fuel plants are not recycling, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. This is not a solution to the plastic waste crisis and should not be allowed in our state.

California should be a leader in protecting our communities from toxic pollutants and the current regulations do the opposite.

We urge strong implementation of SB 54 that reflects the intent of the law, which is to greatly reduce the amount of plastic we are producing and discarding into our

environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

Response to O-5-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology.

O-6: Los Angeles Waterkeeper (Maura Monagan)

Comment O-6-1

California has an opportunity to greatly reduce plastic pollution scourging our state and set a national example for bold action to address the plastic waste crisis.

If fully implemented, the landmark Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), will reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians. However, the current draft regulations to implement the act greatly weaken the law, with broad exemptions for food products and weakened protections against a process known as "chemical recycling."

"Chemical recycling," sometimes called "advanced recycling," is intended to convert plastic waste into fuel or raw materials for new plastic, but it is mostly a new euphemism for an old and dirty practice: incineration. Plastics-to-fuel plants are not recycling, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. This is not a solution to the plastic waste crisis and should not be allowed in our state.

California should be a leader in protecting our communities from toxic pollutants and the current regulations do the opposite.

We urge strong implementation of SB 54 that reflects the intent of the law, which is to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our waters and communities from the environmental and health impacts of plastic production and disposal.

Response to O-6-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition

based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology.

O-7: Recycled Materials Association (Natalie Betts)

Comment O-7-1

Thank you for your work to improve the recycling system in California through the implementation of SB54. The Recycled Materials Association (ReMA) is the trade association representing over 1,700 companies who process, sort, broker and consume recycled materials including metals, paper, plastic and glass. Our member companies operate across the U.S. and around the globe, playing a critical role in providing recycled materials to our domestic and global manufacturing supply chain.

Formerly known as ISRI until April of last year, ReMA's mission is to promote safe, environmentally responsible and economically sustainable recycling through advocacy, networking education. ReMA is the organization responsible for managing the ISRI Specifications ("ISRISpecs"), which define the quality standards and composition of recycled materials traded both nationally and internationally. The ISRISpecs are globally recognized guidelines for the purchase and sale of recycled materials. While they have been in place for well over 80 years, they are updated regularly to ensure they meet the changing needs of manufacturers and recycled material consumers, as materials, technologies and processes evolve.

ReMA and our members fully support and share California's goal expressed through the Plastic Pollution Prevention and Packaging Producer Responsibility Act to ensure that all single-use packaging and food service ware materials are responsibly recycled. We are committed partners in building a more effective, transparent, and sustainable recycling system.

Response to O-7-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment O-7-2

ReMA's comments below focus on **ARTICLE 4: Responsible End Markets** and offer recommendations on changes that would more effectively achieve the goal of ensuring all covered materials are recycled responsibly, and offers our support for changes regarding bale tracking.

Response to O-7-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment alludes to specific recommendations made elsewhere in the submission, CalRecycle has addressed those recommendations in response to those portions of the submission.

Comment O-7-3

Confidential Business Information

Information about buyers, sellers, volumes, and sortation or processing practices are highly protected information in the recycled materials industry, as these data points often represent the competitive advantage of firms in a tight-margin, commodity business. Exceptional care needs to be taken to protect this information from public disclosure and from competitors.

Only third-party auditors or third-party certification bodies should have access to this sensitive information and must keep this information confidential. The draft regulation's requirement in Sections 18980.4.a.2. that Responsible End Markets must submit any records on buyers and sellers to the PRO itself or Independent Producers raises significant concerns.

First, Independent Producers or PRO board members may be competitors of end market entities, given vertical integration in the industry. Second, Section 18980.4.2.d states that the PRO and Independent producers must disclose unredacted records to the Department upon request. Only the PRO and Independent Producers, not the end market entities, are given the right to specify which information records it claims are wholly or partially confidential or otherwise exempt from public disclosure. These rules create a substantial risk for end market entities that sensitive business information is disclosed.

Response to O-7-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(ad), 42051.1, 42060, and 42080, and no change is necessary to the implementation or enforcement of the Act. Section 18980.4.2(a) of the proposed regulations already provides that all compliance audits of responsible end markets must be conducted by an independent third-party, and nothing in the Act or proposed regulations requires the independent third-party auditor to provide facilities' confidential information to the PRO. Rather, the PRO merely must include the findings of the audit in its annual report (18980.4.2(b)) and verify that each end market it uses satisfies the requirement to be a responsible end market (18980.4.2(c)). While CalRecycle is required to be given full access to the compliance audit report upon request, the proposed regulations, including sections 18980.4.2(d) and 18980.14, make clear that CalRecycle is required to protect applicable confidential information from being disclosed to the public. See the response to comment O-7-4. Therefore, the proposed regulations already

provide for the necessary protections against the improper use or release of end markets' confidential information, and no change is necessary.

Comment O-7-4

Additionally, there appears to be a potential gap in statutory protection. For instance, SEC. 4 of SB 54 provides confidentiality protections, but is specifically limited to "the proprietary information of producers, retailers, wholesalers, and solid waste enterprises by keeping confidential the financial, production, and sales data reported by those entities under Section 2 of this act." Notably, recycled materials companies and end market entities that are not considered "solid waste enterprises" do not appear to fall within these enumerated categories and therefore CBI submitted for REM verification could be vulnerable to disclosure, especially if submitted to the PRO and not through California's RDRS system.

This risk of insufficient CBI protection for companies that deal in recyclable commodities (not solid waste) is compounded by SB 54's antitrust provisions in Section 42055, which create a carveout allowing the PRO and its participants to engage in certain collaborative activities without violating antitrust laws, subject to certain explicitly excluded activities. This framework could create additional competitive risks if CBI about buyers, sellers, processing practices, and markets can be used in anticompetitive ways by those who have access to it under SB 54.

ReMA strongly recommends amending this section to instead require that end market entities transparently disclose such information only to approved independent third-party auditors and that said disclosures shall be exempt from public disclosure, except for the audit result.

Response to O-7-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(ad) and 42060, and no change is necessary to the implementation of the Act. Specific provisions of the Act, including, for example, PRC sections 42051.2(b)(5), 42063(c), and 42080(e), evidence a clear intent by the Legislature to ensure that CalRecycle protects the confidential information of regulated parties, including trade secrets and financial, production, or sales data, from being disclosed to the public. The proposed regulations, including sections 18980.4.2(d), 18980.6.6(b) and 18980.14, are consistent with this legislative intent and provide for the necessary protection against any improper disclosure by CalRecycle of parties' confidential information. Consistent with those provisions, CalRecycle will protect applicable confidential information from being disclosed to the public or otherwise used in a manner that is not consistent with the Act. Therefore, the existing language of the proposed regulations already provides adequate protections against the improper disclosure of parties' confidential information and no change is necessary.

Comment O-7-5

Yield

Section 18980.4.a.4 regarding yield is incompatible with the on-the-ground realities of packaging recycling. The recycling system for packaging is intertwined with commercial and industrial systems for recycling construction materials, vehicles, durable goods, and other items not covered by the producer responsibility program. Furthermore, recyclers do not process materials from one state at a time. Isolating the covered materials from an individual state for transparency on their yield rate is infeasible without significantly disrupting business operations. Finally, information on yield is often inextricable from highly sensitive business information on recycling processes.

ReMA understands that the state is concerned that recyclable materials could be intentionally disposed of by non-responsible entities. The state should consider alternative methods of verifying that REMs are not engaging in these practices, such as an independent third-party auditor observing the entity's inbound inspection process, rather than requiring the yield data as outlined in the proposed regulation text.

Response to O-7-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1 and 42060, and the recommended changes are not necessary to the implementation or enforcement of the Act. PRC section 42051.1(c)(2) requires a PRO plan to describe how it will support and achieve the collection, processing, recycling, or composting of covered materials to meet the requirements of the Act. Among other requirements, the Act provides that covered materials must be sent to responsible end markets to be considered recycled (PRC section 42041(aa)) and further provides that responsible end markets are materials markets in which recycling is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety (PRC section 42041(ad)). Consistent with these provisions, section 18980.4(a)(4)(A) of the proposed regulations provides that, to be a responsible end market, an end market facility's recycling process must achieve an average recycling yield that meets or exceeds the threshold recycling yield identified in the plan. Section 18980.4.1(a)(2) of the proposed regulations requires a PRO plan to describe the process by which it will evaluate whether each end market it uses meets the standards specified in section 18980.4(a), including the yield requirement of section 18980.4(a)(4)(A). Therefore, consistent with these provisions, the Act and proposed regulations clearly provide that a PRO is responsible for ensuring the end markets it uses achieve the necessary recycling yields under section 18980.4(a)(4)(A). To the extent such demonstration may currently be infeasible, the PRO is responsible for including in its plan the actions or investments necessary to meet this requirement pursuant to PRC section 42051.1(b)(1). Moreover, section 18980.4.3 of the proposed regulations already provides for compliance audits of responsible end markets by independent third parties; the recommendation of this comment to replace the yield requirement with audits is therefore misplaced because CalRecycle has determined that both yield and

audits are necessary and appropriate to ensure that end markets continue to satisfy the requirements of PRC section 42041(ad). Therefore, no changes to the proposed regulations are necessary to ensure the yield requirement of section 18980.4(a)(4)(A) can be satisfied.

Comment O-7-6

Bale Tracking Requirement

ReMA strongly supports the removal of the bale tracking requirement language in the new draft. The use of battery-powered tracking devices in bales would have created a significant risk of fires at recycling facilities, in vehicles, and throughout the supply chain. It would have endangered lives, contaminated recycling, and created a severe risk of catastrophic property damage or environmental harm. CalRecycle's decision to instead use safer forms of verification will protect workers, communities, and first responders.

Recyclers have choices and options for where they source materials. If REM verification requirements are too burdensome, too vague, compromise confidential business information, or do not allow sufficient time to adequately prepare, recyclers may decide to source material from other states or markets, which could leave California MRFs and residents in a bind, even for materials that previously had strong end markets.

In addition, it must be stressed that the materials covered by the California law sometimes represent a small minority of the inbound material for an end market: for example, steel and tin cans are processed by ferrous metal recyclers who primarily process much larger quantities of ferrous metals from used automobiles, appliances, post-industrial scrap, and construction materials. Asking recyclers to track or report differently for a small portion of their inputs adds complexity without proportional benefit.

Due to these concerns, we urge CalRecycle to reconsider its approach to REM yield requirements and confidential business information.

Response to O-7-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(ad), 42051.1, and 42060, and the recommended changes are not necessary to the implementation of the Act. To the extent this comment expresses support for the removal of the bale tracking requirement, the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends reconsideration of the yield requirement and raises concerns about entities' confidential business information, no response is necessary because these issues have been addressed in response to other portions of the submission discussing the same issues. See the responses to comments O-7-3, O-7-4, and O-7-5.

O-8: 350 Bay Area Action (Judy Sorey)

Comment O-8-1

My name is Judy Sorey. I am a volunteer/legislative advocate for 350 Bay Area Action. We are concerned about several revisions to the latest draft regulations, especially the weakened protections against "chemical recycling", sometimes called "advanced recycling".

In the language of SB 54, recycling does not include combustion, incineration or fuel production and should minimize environmental and public impacts. Chemical recycling essentially is incineration and fuel production and does have environmental impacts.

In addition to the C02 emissions and pollution produced during the making of plastic products, this so-called "recycling" process adds more emissions. Toxins such as dioxins and heavy metals, which are carcinogens and neurotoxins, are often emitted during the process. Chemical recycling is also very energy intensive. Its primary product is fuel (86-99%) to be burned, and the secondary product polymers (1-14%) to be downcycled into another plastic product [1]. Pyrolysis and gasification can produce from 55 to 238 times more greenhouse gas emissions than mechanical recycling [2].

Economically, plastic produced by chemical recycling is between 10-100 times worse on economic metrics than virgin plastic [3].

Few "chemical recycling plants are operational in the US, and they are heavily subsidized. Two plants have multi-million dollar law suits against them. Oregon's plant, Agilyx, received $577,255 in tax credits but closed in 16 months [4]. In Rohnert Park, CA, Resynergi has moved into a production plant, 600 feet away from a high school [5]. The residents are concerned about this "untested" microwave technology and California Communities Against Toxins filed an "intent to sue" notice stating Resynergi is violating the Clean Air Act [6].

Chemical/advanced recycling isn't recycling nor advanced. It is not a "solution" and we should avoid it.

We need to enforce the intent of SB 54 to reduce the amount of plastic we are producing, find safe ways to recycle and discard it, and protect our environment, health and future.

[1] Center for Climate Integrity. "The Fraud of Plastic Recycling," February, 2024. https://climateintegrity.org/projects/plastics-fraud

[2] Celeste Meiffren-Swango, Grace Vickers, James Horrox, and Grace Li. "Chemical recycling": What you need to know." March 15, 2023. https://pirg.org/california/resources/chemical-recycling-what-you-need-to-know/

[3] Celeste Meiffren-Swango, Grace Vickers, James Horrox, and Grace Li. "Chemical recycling": What you need to know." March 15, 2023. https://pirg.org/california/resources/chemical-recycling-what-you-need-to-know/

[4] Beyond Plastics, "One of 11 Constructed Chemical Recycling Facilities in the United States Shuts Down," March 6, 2024. https://www.beyondplastics.org/press-releases/oregon-chemical-recycling-facility-closes-3-6-24

[5] CBS San Francisco. "Rohnert Park plastics recycler faces lawsuit over plans to begin operations near school," August 15, 2025. https://www.cbsnews.com/sanfrancisco/news/rohnert-park-plastics-recycler-resynergi/

[6] CBS San Francisco. "Rohnert Park plastics recycler faces lawsuit over plans to begin operations near school," August 15, 2025. https://www.cbsnews.com/sanfrancisco/news/rohnert-park-plastics-recycler-resynergi/

Response to O-8-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. As the commenter identifies, PRC section 42041(aa)(2)(B) expressly excludes incineration from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

CalRecycle also rejects this comment for the reasons stated in responses to comments O-6-1,O-9-42, and O-62-1.

O-9: Glendale Environmental Organization (IGEC) (Jennifer Pinkerton)

Comment O-9-1

As introduced, SB 54 was ambitious, overdue legislation that could have delivered staggering environmental and encouraged equivalent action by other states. An updated economic assessment recently released by CalRecycle cites $32 billion in net benefits and a slashing of plastic waste by 1.9 billion pounds.

However, the current draft regulations cannot achieve the stated goals of single-use packaging and plastic achieving recycling rates of 30% by 2028, 40% by 2030, and 65% by 2032. This is because the regs would exempt food packaging regulated by the United States Department of Agriculture (USDA) and U.S. Food and Drug Administration (FDA), as well as over the counter (OTC) drugs, and could allow some plastic food packaging to be excluded. This is clearly contrary to the intent of the SB 54 authors.

Response to O-9-1

Comment partially rejected and partially accepted. Regarding over-the-counter drugs, CalRecycle rejects this comment because section 18980.2(a)(6) correctly interprets PRC section 42041(ee)(2)(A) as not exempting those that are cosmetics, as explained in detail in the Initial Statement of Reasons. See, also, CalRecycle's response to comment O-49-1. Regarding food and agriculture packaging, CalRecycle partially rejects the comment because, contrary to the commenter's assertion, nothing in the regulations (e.g., section 18980.2(a)(2)) exempts packaging merely because it is regulated under certain federal laws. CalRecycle partially accepts this comment with regard to food and agricultural packaging, however, to the extent it was intended to allege that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-9-2

Further, the definitions of "reusable" or "refillable" packaging are vague, and requirements pertaining to "chemical recycling" could allow incineration (as well as other polluting technologies) to count toward recycling targets. Incineration is an easy, polluting option.

Response to O-9-2

Comment rejected. The commenter provides no support for the contention that the definitions of "reusable" or "refillable" are vague. Those definitions are set forth in statute, and the regulations contain detailed provisions interpreting and clarifying those definitions (18980.1(a)(25) and 18980.2.1). Regarding incineration, the statute itself unambiguously states that incineration is not recycling (PRC sectio n42041(aa)(2)(B)), and no provision of the proposed regulations purport otherwise.

Comment O-9-3

Over time, packaging has evolved to offer better product protection. But evolution should be strategic and responsible. Source reduction strategies ranging from redesign to light-weighting, right-sizing to fewer and alternative materials, are available and compatible with product protection and recyclability. Product and packaging manufacturers must assume responsibility for implementation of such strategies and discontinue the practice of externalizing end-of-life management costs to the public.

The Glendale Environmental Coalition opposes adoption of SB 54 as written.

Response to O-9-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-10: Indivisible Marin (Susan Morgan)

Comment O-10-1

Indivisible Marin, a political activist organization headquartered in San Rafael, has over 8000 members across the State of California. We are deeply concerned with reducing the presence of plastic in our environment.

Enactment of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) took the state a major step toward reducing plastic pollution and litter, improving reuse and recycling, and lowering costs for all Californians. We call on you to ensure the law is fully implemented, so that only real recycling technologies are allowed in our state.

Unfortunately, the draft regulations conflict with plain language in the law, stifle innovation in packaging design, and undermine the goals of SB 54 to reduce plastic pollution and hold producers accountable for the cost of managing their waste.

Excluding packaging for over-the-counter drugs, and food and agricultural commodities illegally undermines the express intent of the law. Weakening protections against so-called "chemical recycling" which converts plastics to fuel instead of other plastics, does not reduce demand for virgin plastics, and it produces fossil fuels that are subsequently still burned, which continues to contribute to air pollution and global warming.

California is at a pivotal moment in the global fight against plastic pollution. How the state implements these policies is critical to the law's success, which will have ripple effects across the country and around the globe. California must not squander this opportunity to lead the way and must not undercut the progress in other states.

We urge strong implementation of SB 54 that reflects the intent of the law, which is to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

Response to O-10-1

CalRecycle partially rejects and partially accepts this comment. CalRecycle rejects this comment generally because it does not suggest any particular revisions to the proposed regulations to address the concerns raised. Regarding over-the-counter drugs, CalRecycle also rejects this comment for the reasons provided in response to comment O-49-1. To the extent the commenter's

reference to "food and agricultural commodities" is directed at section 18980.2(a)(2), however, CalRecycle accepts that portion of the comment and has revised that provision to ensure that it is not applied in a manner contrary to the Act. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2). Regarding "chemical recycling," CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

O-11: California Poultry Federation (Bill Mattos)

Comment O-11-1

On behalf of the California Poultry Federation (CPF), we appreciate the opportunity to

provide comments on the August 22, 2025 regulations implementing SB 54, the Plastic

Pollution Prevention and Packaging Producer Responsibility Act. CPF represents poultry processors, growers, distributors and marketers in the chicken, turkey, duck, squab, game bird and layer industries. Our members are the major suppliers of poultry and eggs in California.

We are writing to express our support for the categorical exclusions provided in Section

18980.2(a)(2) of the draft regulations, which recognize packaging for food subject to regulations, rules, or guidelines for food issued by the FDA and USDA as outside the scope of covered material where no feasible alternative exists.

Support for USDA/FDA Exclusions

• Food Safety and Public Health: FDA and USDA issued regulations, rules and guidelines are not optional and optimized packaging is critical to preventing microbial contamination, maintaining freshness, and ensuring consumer health.

Aligning SB 54 with these standards avoids conflicts between federal and state regulations while ensuring Californians have safe access to protein products.

• Food Security: Protein is an essential nutritional component for California families. The regulatory exclusions help safeguard supply chains and prevent disruptions that could compromise affordability and accessibility of these products.

• Regulatory Certainty: By recognizing federal mandates, CalRecycle provides necessary clarity for producers who must comply with both federal and state law.

This reduces compliance risk and allows members to focus on reducing unnecessary packaging elsewhere in their operations.

In conclusion, the CPF strongly supports CalRecycle's recognition of the unique role of food packaging in maintaining compliance with FDA and USDA regulations, rules, or guidelines in protecting food safety and security. We urge the Department to preserve these categorical exclusions in the final regulations. This approach strikes the right balance between advancing the goals of SB 54 and maintaining California's commitment to public health and nutrition.

Thank you for your consideration of these comments.

Respectfully submitted,

California Poultry Federation

Response to O-11-1

Comment rejected. The comment must be rejected, and no response is required, because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-12: Beyond Plastics (Susan Keefe)

Comment O-12-1

Beyond Plastics is a national education and advocacy organization, working to eliminate plastic pollution, everywhere. Since the adoption of SB 54, plastic pollution problems in California have only gotten worse. Massive amounts of plastic are entering streams and rivers and the Pacific ocean. Huge amounts of fossil fuels are being used to manufacture plastics. Over 16,000 chemicals are used to make plastic including plastic packaging. Environmental justice communities where plastics are manufactured and landfilled are being harmed. Large amounts of tax dollars are being spent to dispose of single use packaging and almost every month there are new scientific papers documenting the presence of microplastics in various parts of the human body. Microplastics and nanoplastics have been found in the human brain, lungs, heart, arteries, kidney, blood, testicles, placenta to name a few. These proposed regulations will not do nearly enough to solve these problems. Given all of the negative information that has emerged since the adoption of SB 54, one would think that the Newsom Administration would propose regulations that are comprehensive, clear and commensurate to solving the problem of plastic pollution. These proposed regulations do the opposite. Contrary to the intent of the law, these proposed regulations will exempt large categories of packaging from the law. Further, these regulations open the door to the risky and expensive process known as “advanced recycling” which is neither advanced or real recycling. The fingerprints of the chemical, plastics and petrochemical industries are all over these proposed regulations. The following proposed changes would bring the regulations closer to the goals of the law, which is to actually solve the

problems caused by plastic pollution in California. The people of California deserve better than what is in this regulatory proposal.

Response to O-12-1

No response to this portion of the commenter's submission is necessary because it is preface to the commenter's substantive comments and raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. To the extent that following portions of the submission suggest specific changes or raise objections, CalRecycle has responded to those portions separately. See, also, CalRecycle's responses to comments I-19-1, O-6-1, O-93-9. B-47-3, O-90-3 and O-62-1, which concern issues discussed in this comment.

Comment O-12-2

Comment 1 - **Chemical recycling should be prohibited categorically.**
Chemical recycling is an industry marketing term for a set of polluting technologies that mostly turn petrochemical-based plastic waste into fuels. It is not a novel or advanced approach as it is based primarily on technologies such as pyrolysis and gasification which have struggled technically and commercially to process plastic waste for decades. It is a dangerous deception pushed by the petrochemical industry that seeks to distract from the need to reduce plastic production.

Beyond Plastics and the International Pollutants Elimination Network (IPEN) published a report on October 31, 2023 documenting the hazardous outputs from chemical recycling. The report found that three of the eleven [at that time] constructed chemical recycling facilities in the U.S. were classified by the EPA as large quantity generators of hazardous waste, and one was a small quantity generator; the others were excluded because their production volumes were so low. Hazardous wastes and air pollutants created by chemical recycling technologies include heavy metals such as cadmium, hexavalent chromium, and lead; ignitable wastes and halogenated solvents; benzene, toluene, and xylene; 1,2-dichloroethane, trichloroethane and tetrachloroethane; oily sludges and wastewater; microplastics; and char. The report also found that eight of the 11 plants were in areas with lower-than-average levels of income, and seven were in areas with higher-than-average concentrations of people of color.

Building out the chemical recycling industry will continue to threaten environmental justice communities. The economic and technical limits of this industry will also prevent it from ever living up to the promises made by the petrochemical industry. In fact, three of the 11 plants profiled in the report have since closed (Regenyx, Fulcrum, and New Hope), one was just sold at auction after a bankruptcy declaration (Brightmark), and at least one does not appear to be operating at all (Prima).

Beyond Plastics strongly supports waste reduction, composting or yard and food waste and the recycling of paper, cardboard, glass and metals. However, most plastics recycling has been an abysmal failure and there is no evidence to show that plastics will ever achieve a high recycling rate. In fact, the failures of recycling—including chemical

recycling—as a solution for plastic pollution was laid bare in California Attorney General Rob Bonta's 2024 lawsuit against ExxonMobil.

Specifically, the state of California's own lawsuit found that plastic manufacturers never intended for most single-use plastics to ever be recycled—its support for recycling programs is instead a public relations tactic waged to allow for the unchecked production of plastics, and single-use disposable products and packaging in particular. The statutory language of SB54 states that the "regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." These regulations need to draw a clear line: it is important to set a categorical prohibition on chemical recycling or other so-called "advanced recycling" technologies. In fact, Senator Ben Allen, the legislation's sponsor, submitted a letter to the Senate Journal on June 30, 2022, clarifying the legislative intent of SB 54 in this regard. In the letter he stated that the definition of *recycling is intended to only include technologies that return or maintain plastic materials within the circular economy. SB 54 specifically states that recycling does not include incineration or combustion of plastic waste (Section 42041(aa)(2)) and requires the regulations to exclude from recycling the technologies that generate significant hazardous waste (Section 42041(aa)(5)). Technologies using pyrolysis, gasification, solvolysis, and similar technologies that involve combustion and incineration, as well as the generation of hazardous waste, are therefore prohibited from being considered "recycling" under SB 54.*

Furthermore, proposed Section 42021(aa)(2) excludes from the definition of "recycling," technologies that produce energy or fuels, and other forms of disposal, which includes technologies like pyrolysis and gasification.

The requirement for a prohibition of these technologies in the regulations could not be clearer. A categorical prohibition of chemical recycling would meet the statutory intent to exclude plastic management technologies that produce significant amounts of hazardous waste, and would bring the regulations in compliance with the statute's requirement that the "regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." **Therefore, we urge a categorical prohibition on chemical recycling technologies, as envisioned in SB 54's requirement that CalRecycle "exclude plastic recycling technologies that produce significant amounts of hazardous waste."**

Response to O-12-2

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. As the commenter identifies, PRC section 42041(aa)(2)(B) expressly excludes incineration from the definition of

"recycling," and nothing in the regulations contradicts that exclusion. See, also, CalRecycle's responses to comments I-25-1, O-6-1, and O-62-1.

Comment O-12-3

Comment 2 - **Exemptions for certain packaging creates massive loopholes.** These regulations identify a number of categorical exemptions—particularly for food and drug packaging—that allow entire packaging classes to fall outside of the scope of SB 54 because of conflicting federal regulatory guidance. Under the proposed revised rule, is it CalRecycle's intent for all food and drug packaging, including categories of products that have highly recyclable alternatives, to be exempt because producers can claim compliance with existing or new Food and Drug Administration (FDA) and US Department of Agriculture (USDA) guidance? If so, this would undermine the statute. Exempted products would then be subject to changes in the federal political climate, creating not only a massive loophole in the law, but persistent volatility in regards to packaging that may or may not be exempt at any given time after program implementation. Additionally, there is no verification process or defined list of exemptions, meaning that this would create a nebulous, moving target that producers can exploit. The goal of SB 54 is to transform packaging systems, but these broad exclusions exempt industries that generate high volumes of problematic plastic waste—particularly in the pharmaceutical industry—and they create unfair exemptions from recyclability and source reduction mandates faced by other sectors. This stymies packaging innovation and disincentivizes companies already developing compliant, recyclable packaging (e.g., paper blister packs). Effective extended producer responsibility programs must create regulatory certainty by ensuring a consistent and level playing field for all producers. We recommend that any language allowing for exemptions be precise, necessary, and in accordance with the statutory intent.

Response to O-12-3

CalRecycle partially rejects and partially accepts this comment. CalRecycle rejects this comment with respect to drug packaging for the reasons provided in response to comment O-49-1. CalRecycle otherwise accepts this comment and has revised section 18980.2(a)(2) to address the commenter's contention that it could function as a loophole for packaging to improperly be rendered outside the scope of the Act. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-12-4

Comment 3 - **Lack of comprehensive standards for reusable/refillable packaging**. Effective EPR programs must fund infrastructure and systems for reusable and returnable alternatives to single-use products and packaging into the program design. Additionally, the eco-modulated fee structure should incentivize producers to rely on reusable and refillable packaging as much as is feasible, as well as ensuring that there

is sufficient infrastructure to reintegrate reusable and refillable packaging back into the market after use. Standards for what packaging qualifies as reusable and refillable are critical for ensuring that the packaging is *truly* reusable/refillable. The need for precise regulatory standards was recently illustrated in California when amendments were made to correct the famously imprecise language in the state's original plastic bag ban. Amended language finally prohibited the distribution of the thicker single-use plastic bags that surfaced after the passage of the original legislation. The draft regulations for SB 54 currently do not contain comprehensive standards for what qualifies as refillable or reusable packaging, nor do they contain any standards or clarifications for multi-component packaging (such as beverage containers that contain a cup, lid, and straw) that may be totally or in part reusable or refillable. We urge that the regulations include specific definitions and standards for reusable and refillable packaging, and that they consider requiring independent third-party certification for reusable and refillable packaging in the future. Clarify that the entirety of a packaging product defined as reusable/refillable, including derivative and detachable components, be reusable/refillable, and not just one component of the item. Many reusable containers are paired with disposable lids, straws, or films, which opens the door for innumerable permutations of partially reusable products then being exempt from other requirements under SB 54. Thank you for your attention to these comments and for your consideration of Beyond Plastic's recommendations for inclusion in the subsequent draft regulations for SB 54.

Response to O-12-4

CalRecycle rejects this comment because statute contains straightforward standards for what constitutes "reusable" or "refillable" packaging, and section 18980.2.1 of the proposed regulations interpret those provisions to the extent necessary for regulated entities to comply with the law and for CalRecycle to enforce it. CalRecycle specifically rejects the suggestion for requiring third-party certifications because that would add a criterion that is not present in statute; CalRecycle cannot add requirements beyond those in section 42041(af).

O-13: City of San Jose (Kathryn Walsh)

Comment O-13-1

To Whom It May Concern:

The City of San José (City) appreciates the opportunity to submit comments on the Proposed Regulation Text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act, dated August 22, 2025, developed by CalRecycle for the implementation of Senate Bill (SB) 54.

Integrated Waste Management

The Integrated Waste Management (IWM) division within the City's Environmental Services Department (ESD) oversees solid waste collection, processing, and disposal

for residential, commercial and City Facilities operations. IWM develops and implements programs to meet or exceed state regulations, provides ease of use and exceptional value to customers, and improves and protects the environment by reducing greenhouse gas emissions associated with the disposal of solid waste. The City's Residential Garbage and Recycling Program provides curbside garbage and recycling, yard trimmings, and street sweeping services to approximately 216,500 single-family and 118,400 multi-family households. IWM oversees commercial solid waste collection services to about 8,000 accounts at business sites in San José.

Response to O-13-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-13-2

Specific Comments

SB 54 is intended to shift packaging pollution responsibility to the producers of such materials and lessen the substantial burden on local jurisdictions related to waste collection and processing of covered materials; per CA Public Resources Code (PRC) § 42040 (b)(2)(A). We commend CalRecycle's efforts to lower emissions of carbon dioxide, methane, and volatile organic compounds and reduce the amount of plastic and other packaging and food serviceware waste disposed of in landfills by shifting to materials that are either fully recyclable or fully compostable.

The City appreciates that the proposed regulations have clarified in Section 18980.3.2 that free-attribution mass-balance methodologies in the calculation of the recycling rate is not allowed.

However, as we stated during the most recent informal comment period ending on June 3, 2025, we have significant concerns about the language included in several sections that are vital to ensuring that the goals of SB 54 are met. These concerns are as follows:

Response to O-13-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-13-3

1. Section 18980.2: Categorically Excluded Materials

The City strongly believes that the significant expansion to categorically exclude certain products set out in Section 18980.2(a) of the draft regulations is outside of the exclusions specified in statute. The only legally allowable categorical exclusions, which entirely exempt products from being considered covered material under SB 54, are those which are specified in PRC Section 42041(e)(2). An expansion of this nature is neither in keeping with the letter or the law nor the intent of the law to allow most food packaging to be exempted. SB 54 was designed to ensure those producers who design, and market packaging are responsible for its end-of-life costs and to drive a cost-effective packaging management system. The regulations as currently drafted will undermine these goals through broad exemptions for entire packaging categories and shift costs on to responsible producers. This would greatly damage the funding mechanism in SB 54; it would also be inequitable for businesses that don't qualify for a categorical exemption and create a less effective system.

The Standard Regulatory Impact Assessment that CalRecycle published in June 2025 estimates that the total benefits of SB 54 are over $53 billion, the average annual cost to regulated producers could be up to $457,114 and the average annual cost to households could be up to $190 (in the unlikely event that all of businesses' costs are passed through to consumers). However, these estimated benefits and costs assume that SB 54 is implemented as intended by the State of California. If a large percentage of the products that are currently required to be covered by statute pursue categorical exclusions under the proposed regulations, the costs to the remaining regulated producers would increase significantly and consumers' costs may increase as a result. SB 54's intent to reduce the financial burden on ratepayers would also remain unmet, as many types of packaging intended to be covered under SB 54 would be categorically excluded from all current and future requirements to meet SB 54's recycling rates and recyclability mandates. The estimated minimum of $53 billion in benefits resulting from SB 54 would also not be realized, due to the same issue.

Another strong concern we have with this section in the proposed regulations is that permanent categorical exclusions are deemed granted unless and until CalRecycle states otherwise. If exclusions are kept in the proposed regulations, it is vital to ensure that the exclusion process mirrors the various exemption processes outlined in the proposed regulations (in Sections 18980.2.3, 18980.2.4, and 1890.5.2), which only grant an exemption upon CalRecycle's review and approval of the exemption. Additionally, the City is highly concerned that as currently written, secondary and tertiary packaging for categorically excluded materials receive a categorical exclusion as well. These materials are indistinguishable from those used for primary packaging, as well as secondary and tertiary packaging associated with covered materials that would remain in the SB 54 system. Cardboard boxes and flexible film are two examples of secondary and tertiary packaging types used by a wide variety of producers for a variety of products, many of which should not be categorically excluded according to statute.

Response to O-13-3

Comment partially rejected and partially accepted. The commenter's conclusory statement that only Public Resources Code section 42041(e)(2) specifies allowable "categorical exclusions" ignores the statute's broad, express direction to CalRecycle to ensure that the regulations avoid conflicts with federal laws and regulations. Given the statute's broad mandate in section 42060 for CalRecycle to adopt regulations "necessary to implement and enforce this chapter," interpreting subdivision (b) of that section as authorizing CalRecycle to achieve its requirements by excluding materials from regulation is appropriate. Moreover, the commenter is incorrect that anything in section 18980.2(a) establishes inappropriate "broad exemptions for entire packaging categories." The only categories broadly excluded are those specifically mentioned in Public Resources Code section 42041(e)(2), as interpreted, which the commenter acknowledges is proper. Section 18980.2(a)(2) addresses packaging other than those excluded under 42041(e)(2):

•It does not result in "broad exemptions for entire packaging categories." It only concerns packaging presenting intractable compliance barriers under federal law).

•It does not create "permanent categorical exclusions." The exclusions are subject to CalRecycle's immediate review of submitted claims of exclusion, for which CalRecycle can require additional support at any time.

•It does not create a new exclusion for secondary and tertiary packaging. Section 18980.2(a)(2) does not state that secondary and tertiary packaging can be excluded based on primary packaging being excluded because of conflicts with federal law. In contrast, 18980.2(b) provides that exclusions pursuant to Public Resources Code section 42041(e)(2)(A) through (D) do encompass secondary and tertiary packaging because the plain language of statute requires that outcome.

CalRecycle accepts this comment however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. Regarding the creation of "permanent categorical exclusions" in particular, subparagraphs (C) and (F) of the revised section 18980.2(a)(2) more clearly describe how CalRecycle will review submissions upon receipt and include safeguards to prevent exclusions from effectively being permanent regardless of their merit. See, also, CalRecycle's response to comment I-19-1 explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-13-4

i. Recommendation: Delete the entirety of Section 18980.2(a)(2) in the current version of the proposed regulations. If it is not removed, it will directly conflict with statute and result in a failure of the state to implement SB 54 as required by statute. Instead of this expansion, we strongly recommend that the proposed regulations continue to allow producers of these materials to instead apply for an exemption under an existing process outlined in the proposed regulations (such as the "unique challenges" exemption outlined in Section 18980.2.4)— this would require these producers to remain part of the SB 54 system and would create a clear pathway for producers to onboard materials as it becomes feasible to do so.

Response to O-13-4

CalRecycle rejects this comment for the reasons stated in response to comment O-13-3[AB94.1], of which this comment is a continuation, and because removing 18980.2(a)(2) would leave the proposed regulations without a mechanism for sufficiently addressing the conflicts that must be addressed pursuant to in Public Resources Code section 42060(b). Also, the only exemptions that would potentially apply in the manner suggested are those described in 18980.2.4 (implementing Public Resources Code section 42060(a)(3) and (4)). As explained in response to comment I-59-2, removing 18980.2(a)(2) and relying on those exemptions instead would be inadequate. See, also, the response to comment O-93-9 for further explanation of why CalRecycle declines to remove 18980.2(a)(2).

Comment O-13-5

ii. Recommendation: Delete the additional categorical exclusion that was added to the draft regulations in Section 18980.2(b) for secondary and tertiary packaging of categorically excluded materials.

Response to O-13-5

CalRecycle rejects this comment for the reasons stated in response to comment O-13-4, of which this comment is a continuation. Section 18980.2(b) is appropriate because Public Resources Code section 42041(e)(2) concerns packaging for certain goods, and section 42041(s)(3) expressly defines packaging to include goods' secondary and tertiary packaging.

Comment O-13-6

iii. Recommendation: If CalRecycle keeps the categorical exclusion provision, change the process so that these materials are only able to be excluded after CalRecycle has approved an entity's application for this exclusion that satisfactorily justifies why the material does not qualify under unique challenges, instead of upon CalRecycle receiving such an application. The application must be approved or denied by CalRecycle within 3 months of the entity's submission of the application.

Response to O-13-6

Comment partially accepted and partially rejected. CalRecycle accepts the comment to the extent it suggests that mere submission of claims for exclusion under section 18980.2(a)(2) should not immediately render the packaging at issue not "covered material". Section 18980.2(a)(2) has been revised so that CalRecycle examines submissions to confirm: (1) that the submission contains the required content described in subparagraph (B); and (2) that CalRecycle has not identified alternative packaging that would resolve the legal conflict cited.

CalRecycle rejects, however, the commenter's suggestion that each application be subject to a three-month approval process. As an initial matter, it may not be possible in every case for CalRecycle to make a determination on the merits of a submission within three months. Moreover, such a process would impose uncertainty and unreasonable timelines on businesses to make packaging modifications, which are more fairly addressed through the process set forth in subparagraph (E) (formerly subparagraph (B)). The process described in subparagraph (E) more realistically balances the need to exclude only packaging that is eligible for the exclusion with the ability of businesses to shift away from packaging that is not eligible.

Lastly, the commenter's suggestion of a three-month review process for every submission would not, in most cases, result in a meaningfully different process than the one set forth in section 18980.2(a)(2), as revised. All exclusions under 18980.2(a) must be based on specifically identified federal laws, many of which greatly limit compliance pathways and of which there is a finite number that will not expand quickly, if ever. Given that reality, CalRecycle is likely to receive voluminous submissions concerning nearly identical packaging and the same conflict with federal law. Once CalRecycle examines a small number of such claims and determines that initiating the longer process described in subparagraph (E) for vetting the claims is not necessary, there would rarely, if ever, be cause for CalRecycle to initiate it for the subsequent claims. Accordingly, a formal three-month process would rarely, if ever, serve any purpose. In the alternative scenario, where the CalRecycle initiates the process described in subparagraph (E) because of an apparently unjustified exclusion claim, subparagraph (F) ensures that subsequent submissions do not result in the exclusion applying until CalRecycle makes a determination on the submissions' merits, further ameliorating the commenter's concern over unjustified assertions of the exclusion.

Comment O-13-7

2. Section 18980.4.1 & 18980.3.5: End Market Identification & Disposal Definition

The City appreciates that alternative recycling methodologies are now explicitly compared to mechanical recycling in Section 18980.4.1(d) of the draft regulations. However, the City is highly concerned that the definition of "significant amounts of hazardous waste" as "hazardous waste as defined in Title 40 of the Code of Federal

Regulations Section 261.3 that presents an imminent and substantial risk of harm to public health, or to the contamination of the environment" does not align with statute's requirement that CalRecycle's regulations "shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste" (PRC Section 42040(aa)(5). Specifically, the City is concerned that rather than setting a standard for the term "significant amounts of hazardous waste," this definition actually defines "hazardous waste" and does not set the standard required by statute. This standard must be set by CalRecycle, as is required by statute, and not by the Producer Responsibility Organization (PRO) or an Independent Producer, as it is currently written in Section 18980.4.1(d)(5).

The City is also deeply concerned about Section 18980.4.1(d)(5)(1)(B) in the draft regulations, which states that "The production of hazardous waste that is handled and disposed of in substantial compliance with an applicable permit does not present a substantial risk of harm to public health or to contamination of the environment, for purposes of the Act and this chapter." This language allows for any amount of hazardous waste to be generated by plastic recycling technologies, and therefore for these technologies to be allowed as "recycling" under SB 54 as long as the hazardous material they generate is disposed of in accordance with awarded permits. The City strongly believes that this subsection must be removed in order for the regulations to align with statute and to avoid mischaracterizing technologies that generate significant amounts of hazardous waste as recycling technologies.

Additionally, the City requests that CalRecycle include additional language in this section to fulfill the statutory requirement that "The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste" (PRC Section 42040(aa)(5)). These additional impacts, including the generation of greenhouse gas emissions and the impacts to environmental justice communities, must be considered when technologies are being evaluated as to whether or not they can be considered recycling technologies. Impacts to environmental justice communities in particular are something that statute is explicitly concerned about, due to the disproportionate impacts that the current and historical waste management system and plastics industry have had, and continue to have, on these communities. The SB 54 regulations must ensure that communities are protected from incredibly harmful facilities being created in their neighborhoods under the guise of needing to meet SB 54's ambitious recycling targets.

Finally, the City requests that CalRecycle re-insert language in Section 18980.3.5 of the proposed regulations clarifying that "other forms of disposal" are considered disposal under SB 54. The City appreciates that CalRecycle intends for the proposed regulations not to directly duplicate statute; however, in this case, including such language provides much-needed clarity on the activities that are considered disposal, and therefore not considered recycling, under SB 54.

Response to O-13-7

CalRecycle rejects this comment for the reasons provided in responses to comments O-62-1 and O-13-11.

Comment O-13-8

i**. Recommendation:** Amend Section 18980.4.1(d)(5) to include additional language creating a clear standard for "significant amounts of hazardous waste," as is required by PRC Section 42040(aa)(5). Further amend this section to remove the requirement that the standard for "significant amounts of hazardous waste" be decided by the PRO or Independent Producers.

Response to O-13-8

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-13-9

ii. Recommendation: Remove Section 18980.4.1(d)(1)(B), in order for the regulations to align with statute and to avoid mischaracterizing technologies who generate significant amounts of hazardous waste as recycling technologies.

Response to O-13-9

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-13-10

iii. Recommendation: Add language in Section 18980.4.1(d)(5) to fulfill the statutory requirements that these regulations must meet, as stated in PRC Section 42040(aa)(5).

Response to O-13-10

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-13-11

iv. Recommendation: Add language in Section 18980.3.5 stating that "Other forms of disposal, as defined in subdivision (b) of section 40192 of the Public Resources Code," which was previously included in the proposed SB 54 regulations dated December 2, 2024.

Response to O-13-11

Comment rejected. Referring to Public Resources Code section 40192(b) directly is unnecessary because, in context of this statute, anything not considered "recycling" is necessarily "[o]ther forms of disposal." Accordingly, limiting what constitutes "other forms of disposal" to the activities described in Public Resources Code section 40192(b) would be, at best, redundant with the statute's

and proposed regulations' treatment of what constitutes "recycling." At worst, such a definition is inconsistent with other provisions of the proposed regulation and the statute concerning responsible end markets: Any processing by an end market that is not a "responsible end market" is necessarily not "recycling" and therefore must be an "other form of disposal," regardless of how Public Resources Code section 40192(b) defines "disposal."

Comment O-13-12
Continued Concerns

The City appreciates CalRecycle's efforts to analyze and incorporate changes based on the comments received during the first formal rulemaking process. However, several sections that are relevant to local jurisdictions remain unchanged; we look forward to reviewing the Statement of Reasons to better understand why some of our comments during the first formal rulemaking process were not addressed. We continue to have concerns related to effective implementation of the intent of SB 54, particularly in the following areas:

1. Section 18980.8(g): Covered Costs of Local Jurisdictions and Recycling Service Providers

The City appreciates that language throughout this section has been changed from "reimbursement" to "covered costs"— this is a clear allowance for the PRO to cover costs upfront instead of after the fact, where the regulations were previously unclear. The City also appreciates the addition of Section 18980.8(g)(8) to the draft regulations to require the PRO to notify local jurisdictions of the amount and type of payments made to local recycling service providers. However, the City continues to have strong concerns about this section.

The PRO is required to pay for costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement SB 54 (PRC section 42060(a)(1)). This includes the costs of collecting, transporting, and processing covered material, as well as the cost to educate the public about proper sorting of covered material. However, in Section 18980.8(g)(2)(A) of the draft regulations, for costs of the same type that were already being incurred by a jurisdiction, "Only the amount of the increase caused by [the] requirements [of SB 54] is reimbursable." Separating costs that are due to the existence of SB 54 from costs that are not from SB 54 implementation could prove extremely difficult and incredibly burdensome for jurisdictions.

Additionally, as currently written in Section 18980.8(g)(3) of the draft regulations, for every cost identified by the entity requesting cost coverage, the PRO shall determine the costs that are covered. This is aligned neither with statute, nor with the intent of SB 54 to shift the burden of managing covered material from local jurisdictions to the PRO. While the PRO has authority to create the process through which it will pay local jurisdictions' and local recycling service providers' costs, the PRO does not have statutory authority to make a determination on the portion of costs that are covered.

Covered costs are already specified in statute (Sections 42051.1 and 42060(a)(1) of the Public Resources Code), and the PRO must also cover costs beyond those specified in statute, as outlined in Section 42060(a)(1) of the Public Resources Code. This language gives the PRO additional powers beyond those outlined in statute, and it may have the unintended consequence of the PRO determining that only certain costs within the categories of costs that the PRO must cover will be covered.

Response to O-13-12

Comment rejected. To the extent the commenter implies that the Act supports the contention that the PRO must cover all costs associated with SB 54, regardless of whether the costs are increased due to SB 54 requirements, that assertion is incorrect. Paragraph (1) of subdivision (d) of section 42053 actually requires the opposite conclusion. That paragraph states one factor the PRO must consider when exercising its discretion with respect to its fee schedule: "[t]he costs to ensure each covered material category meets the requirements of this chapter." But subparagraphs (A) through (E) do not state costs that the fees must be sufficient to cover in their entirety. To the contrary, paragraph (1) states that the costs to be considered "may include all of the following," including the costs identified in subparagraph (C): "[c]osts incurred by local jurisdictions ... to process and transport covered materials ... ." By providing those costs as a categorical example of those that the PRO may consider, as opposed to identifying them as mandatory costs that the PRO must (or "shall") cover, this statutory text makes clear that the Legislature did not intend for funding by the PRO to cover the entirety of local jurisdictions' and recycling service providers' costs associated with SB 54. In effect, the Legislature only authorized, but did not require, the PRO to base its fee schedule to some degree on those costs.

To the extent the commenter suggests that the proposed regulations be modified to restrict the PRO's discretion concerning cost determinations, CalRecycle rejects that suggestion because the commenter proposes no alternative approach. CalRecycle also rejects the suggestion because PRC section 42051.1(g) unambiguously establishes that the Legislature intended the PRO to make cost determinations; if the Legislature did not intend the PRO to have the primary role in those determinations, there would be no purpose of having the PRO "include a process" for those determinations in its producer responsibility plan. Section 18980.8(g) of the proposed regulations requires that the PRO satisfy its statutory obligations under the PRO plan by imposing restrictions on the PRO's decision-making consistent with statute. That discretion remains subject to CalRecycle's oversight authority because the producer responsibility plan itself is subject to CalRecycle's approval. CalRecycle may reject a plan that does not ensure that the PRO will satisfy its statutory obligations, one of which is to provide necessary funding. CalRecycle also exercises ongoing oversight authority because it may hold the PRO to be in violation of its obligations if it fails to abide by its plan, including all provisions concerning provision of funding.

Comment O-13-13

i. Recommendation: Amend the language in Section 18980.8(g), "For purposes of this subdivision, costs that the PRO and Independent Producers are obligated to pay are referred to as 'covered costs'" to additionally specify that "this includes (but is not limited to), the costs specified in PRC Sections 42051.1 and 42053(d)(1)(C through E), including both direct and indirect costs, such as personnel and overhead costs, incurred while administering the law," as well as to include additional relevant specification on these statutory provisions, with regards to the specific types of costs that are covered. CalRecycle's statutory authority and requirement to include this specification is found in PRC Section 42060(a)(1).

Response to O-13-13

Comment rejected. The description of costs in section 18980.8(g) is clear and straightforward. CalRecycle declines to adopt a regulation that states that "both direct and indirect costs" are covered costs. Those terms are ambiguous, and the commenter does not provide details as to how attenuated the connection between a cost and the requirements of SB 54 may be before the cost is no longer a covered cost. Rather than relying on terms that may not be uniformly understood among the public, local jurisdictions, the PRO, Independent Producers, courts, and arbitrators called upon to resolve disputes, the framing adopted in section 18980.8(g)(2) relies on a plain, objective comparison between costs caused by SB 54 and those not caused by SB 54. Although that factual inquiry may be complex in certain scenarios, so too would be the question of how "indirect" a cost may be; by avoiding the latter complication, the proposed regulation achieves greater clarity and predictability than the suggested change would achieve.

Comment O-13-14

ii. Recommendation: Remove the requirement in Section 18980.8(g)(2)(A) that only the increase in costs resulting from SB 54 is covered. The goals outlined in SB 54 that producers are required to meet cannot be met without local jurisdictions' ongoing outreach and education efforts and collection costs related to covered material, as well as capital costs related to covered material.

Response to O-13-14

CalRecycle rejects this comment for the reasons stated in response to comment O-56-3.

Comment O-13-15

iii. Recommendation: Amend the language in Section 18980.8(g) to "the plan shall include a process for ~~determining and paying~~ detailing, in alignment with PRC Sections 42051.1 and 42053(d)(1)(C through E), how covered costs that will be incurred, or otherwise would be incurred, by local jurisdictions, recycling service providers, alternative collection programs, and others due to requirements of the Act will be paid by the PRO." This will ensure that local jurisdictions and recycling service providers will

be made whole for the full breadth of covered costs outlined in statute and will remove the draft regulations' current conflict with the intent of SB 54 and the language on covered costs set out in statute.

Response to O-13-15

Comment rejected. CalRecycle rejects the suggested revisions to the proposed regulations to restrict the PRO's discretion concerning cost determinations because PRC section 42051.1(g) unambiguously establishes that the Legislature intended the PRO to make cost determinations. If the Legislature did not intend the PRO to have the primary role in those determinations, there would be no purpose of having the PRO "include a process" for those determinations in its producer responsibility plan. Section 18980.8(g) of the proposed regulations requires that the PRO satisfy its statutory obligations under the PRO plan by imposing restrictions on the PRO's decision-making consistent with statute. That discretion remains subject to CalRecycle's oversight authority because the producer responsibility plan itself is subject to CalRecycle's approval. CalRecycle may reject a plan that does not ensure that the PRO will satisfy its statutory obligations, one of which is to provide necessary funding. CalRecycle also exercises ongoing oversight authority because it may hold the PRO to be in violation of its obligations if it fails to abide by its plan, including all provisions concerning provision of funding.

Comment O-13-16

iv. Recommendation: Amend Section 18980.8(g)(3) as follows: "For every cost identified by the entity whose costs are required by statute to be covered by the PRO or an Independent Producer, the PRO or Independent Producer shall pay all covered costs, as defined in statute, including, by not limited to, those costs identified in PRC Sections 42051.1 and 42053(d)(1) ~~determine the extent to which it is a covered cost~~. The PRO or Independent Producer shall notify the entity of all determinations in writing." This would remove the possibility, which the draft regulations create, for the PRO or an Independent Producer to refuse to fulfill their obligation to cover all costs outlined in statute.

Response to O-13-16

CalRecycle rejects this comment for the reasons stated in response to comment B-13-15.

Comment O-13-17

v. Recommendation: Amend Section 18980.8(g)(8) to require that local jurisdictions concur with the nature and amount of each payment for covered costs being made to recycling service providers prior to payment being made. This change would allow local jurisdictions to ensure that the payment is not a cost that is already being paid for through solid waste rates. This will recognize that, pursuant to Public Resources Code Section 40000, et seq., local jurisdictions have discretion in how to handle solid waste

programs and therefore are responsible for facilitating waste management programs at the local level.

Response to O-13-17

Comment rejected. Section 18980.8(g) already requires advance notice to, and discussion with, local jurisdictions regarding the payment of covered costs for recycling service providers. Therefore, no change is necessary to the implementation or enforcement of the Act. Additionally, CalRecycle does not have the authority to dictate how local jurisdictions allocate SB 54 funds or structure their ratepayer calculations, or any authority over ratepayer assessments. CalRecycle cannot lawfully depart from the statutory provisions in Public Resources Code section 42051.1(g) that require payment of costs to local jurisdictions and recycling service providers incurred due to requirements of the Act. The proposed regulation at section 18980.8 is consistent with the statutory text and legislative intent to pay these costs to local jurisdictions and recycling service providers.

Comment O-13-18

2. Section 18980.11(b): Requirements for Local Jurisdictions and Recycling Service Providers

We appreciate that language was added to clarify that local governments are not responsible for creating responsible end markets, either in the current recycling system or under SB 54. However, we have a few concerns about the way that the regulations currently attempt to clarify this in Section 18980.11. Local jurisdictions often do not have access to data showing where materials end up. San José's recycling service providers' sales information is proprietary, as is often the case for recycling service providers in California. Though data on end markets is intended to be documented through SB 343, local jurisdictions may still not have access to this documentation and may be in long term contracts. Amendments to those contracts could be costly and burdensome, both to the jurisdiction and ratepayers, which would conflict with the written intention of SB 54. Therefore, local jurisdictions may not be aware of the full scope of materials that this section would require them to apply for exemptions for. Moreover, requiring local jurisdictions to apply for exemptions for each covered material that is not being directed to a responsible end market is highly burdensome. As currently written, to comply with SB 54's collection requirements, local jurisdictions would need to apply regularly for an exemption for each CMC deemed "recyclable" or "compostable" that isn't currently directed to a responsible end market. The PRO and Independent Producers are responsible for creating and maintaining responsible end markets for local jurisdictions to send material to through local recycling service providers and intermediate supply chain entities. As such, it is intermediate supply chain entities who should be held responsible for sending covered material to responsible end markets—these entities have control over which end markets materials are sent to, while local jurisdictions do not.

Response to O-13-18

CalRecycle rejects this comment for the reasons stated in response to comment O-13-19, which is a continuation of this comment.

Comment O-13-19

i. Recommendation: Amend Section 18980.11(b) to clarify that intermediate supply chain entities are responsible for ensuring that materials are sent to responsible end markets; delete the associated requirement for local jurisdictions to apply for exemptions for each relevant covered material type that is not sent to a responsible end market. Local jurisdictions must only be held responsible for ensuring the collection of covered materials, as required by PRC Section 42060.5, and not held responsible for the requirement that these materials are sent to responsible end markets.

Response to O-13-19

Comment rejected. CalRecycle rejects this comment along with comment O-13-18.

Regarding local jurisdictions' "access to data showing where materials end up" (comment O-13-18), that concern is not sufficient to merit a change to the proposed regulations. While a recycling service providers' "sales information" might include proprietary information, information about whether material is disposed of, as opposed to recycled, is not "sales information" and, in any event, cannot be a legitimate trade secret because disposal of solid waste cannot be accomplished secretly.

Moreover, even assuming information is unavailable because it is protected as a trade secret, to the extent a local jurisdiction lacks information establishing impracticability (e.g., information establishing the absence of responsible end markets), statute unambiguously dictates the result: The local jurisdiction is not entitled to the exemption. Notably, the commenter does not allege that inability to obtain certain information hampers its ability to collect materials and transfer them within the waste management supply chain, and, contrary to the commenter's assertion, section 18980.11 does not require local jurisdictions to do more than that. Far from holding local jurisdictions responsible "for the requirement that these materials are sent to responsible end markets," 18980.11(b) expressly states that local jurisdictions fulfill their requirement by collecting covered material and transferring it to "responsible end markets directly or to intermediate supply chain entities."

Regarding the commenter's objection to local jurisdictions needing to "apply for exemptions for each covered material," the commenter offers no alternative approach, and CalRecycle cannot discern any. Moreover, the proposed regulation does not require a separate application for narrowly defined covered material items; section 18980.11.1(c)(3) expressly contemplates applications addressing multiple covered materials or covered material categories simultaneously.

Regarding holding intermediate supply chain entities responsible for sending covered material to responsible end markets, CalRecycle rejects that suggestion.

Nothing in statute places burdens directly on such entities or suggests that CalRecycle has authority to directly regulate or penalize them.

Comment O-13-20

ii. Recommendation: Simplify Section 18980.11(b) as follows to eliminate ambiguity: "The local jurisdiction or recycling service provider shall not be required to establish ~~the availability of a~~ responsible end market<u>s</u> ~~to ultimately recycle the covered material~~"

Response to O-13-20

CalRecycle rejects this comment for the reasons stated in response to comment O-13-19 and because the regulatory text at issue is not ambiguous as written. Section 18980.11(b) clarifies that local jurisdictions and recycling service providers have no obligation to establish that responsible end markets are available to recycle covered material. That clarification is plain on its face, and the commenter does not explain how it could be susceptible to multiple interpretations. Moreover, the suggestion would contradict the commenter's apparent aims because it would narrow the meaning of the text as written. The text states that there is no requirement to "establish the availability of a responsible end market," and requiring "develop[ment of] responsible end markets" would be one way to require establishing their "availability." The explicit absence of the former, broader requirement necessarily means the absence of the latter, narrower one. If the text were revised to say only that local jurisdictions and recycling service providers do not need to establish responsible end markets, it would no longer clearly state that they do not have any obligation to establish the availability of responsible end markets.

Comment O-13-21

3. Section 18980.11.1: Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers

The exemption process outlined in Section 18980.11.1 continues to place an incredibly high, disproportionate burden on local jurisdictions. Other exemption processes, such as the PRO requesting exemptions, or CalRecycle deciding to exempt a material, do not require the same level of consultation and approval from other regulated entities. This does not align with the intent of SB 54 to shift the burden from local jurisdictions to producers. The language in Section 18980.11.1 (c) and (d) requiring PRO involvement and jurisdictions' responses to all comments received does not provide protection for jurisdictions from unreasonable denial or overly extensive comments from the PRO that could significantly hinder a local jurisdiction's ability to effectively apply for an exemption in a timely manner. This would increase a jurisdiction's burden and put the jurisdiction at risk of enforcement. The City has therefore recommended several times throughout the SB 54 regulatory process that this requirement be removed, to better align with the exemption process for other regulated entities.

As the City has previously stated, this process also relies on channels of communication outside the scope of local jurisdiction requirements and requires jurisdictions to not only engage with the PRO, but also all independent producers. It will be difficult for local jurisdictions to know all of the independent producers, and their contacts and

communication channels. If there are numerous independent producers, a local jurisdiction could be inundated with comments, for which they are required to respond to each individual comment. It would align more closely with public practices for local jurisdictions to submit their exemption application to CalRecycle. CalRecycle can then make the application publicly available to the PRO or independent producers, and follow-up questions could be directed to the jurisdiction as needed.

i. Recommendation: Remove Section 18980.11.1(d) and Section 18980.11.1 (c)(5) from the proposed regulations. This would remove the substantial administrative burden on local jurisdictions that this section currently creates.

Response to O-13-21

Comment rejected. The commenter asserts that the process for local jurisdictions receiving exemptions is not "align[ed] with the spirit of SB 54 to shift the burden from local jurisdictions to producers." The commenter ignores that SB 54 unambiguously, expressly places one significant burden on local jurisdictions and recycling service providers: They must comply with PRC section 42060.5(a) by including certain covered material categories in their recycling programs. Assuming, as the commenter impliedly does, that the exemption process should impose as little burden as possible is not aligned with the spirit of section 42060.5(a). Moreover, the commenter compares the process for exemptions from section 42060.5(a) to the process for exemptions for covered materials, noting that the latter does not require the same "consultation and approval from regulated entities." That comparison is erroneous because exemptions for covered materials do not affect local jurisdictions in the same manner as exemptions under section 42060.5(b) affect the PRO. Exemptions for covered materials do not affect whether local jurisdictions are required to include covered material categories in their recycling programs. In contrast, exempting jurisdictions from section 42060.5(a) means certain covered material categories will not be collected, in turn affecting producers' (through the PRO and otherwise) achievement of the policy goals and requirements established in PRC section 42050. In contemplation of that difference, statute expressly accounts for objections by the PRO in PRC section 42060.5(b); it does not do so with respect to any other exemption. Therefore, no further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-13-22

4. Article 13: Enforcement

The City greatly appreciates the language that has been included in Section 18980.11(c) to preclude enforcement on local jurisdictions when CalRecycle is reviewing a pending exemption. The City also appreciates that the new version of the proposed regulations include language in Section 1890.11.1(a) to explicitly state that local jurisdictions are allowed to apply for extensions and exemptions to comply with collection requirements after local jurisdictions have been found to be in non-compliance with this requirement. However, the City remains highly concerned about the discrepancy between SB 54's intention as an Extended Producer Responsibility law

and the draft regulations' inclusion of local jurisdictions as entities that can incur fines of up to $50,000 per day per violation for non-compliance.

i. Recommendation: The City recommends that CalRecycle consider a penalty structure that is more equitable and aligned with the goals of SB 54. The described penalty amount would not have the same impact on multi-national companies as it would for local jurisdictions, the latter being excessively burdened with the high cost. This approach does not align with the intent of SB 54 to shift the burden of costs to producers. The City recommends that CalRecycle add language specifying that CalRecycle shall consider in its penalty determination whether the jurisdiction or its designees have received adequate support and funding by the PRO to accomplish the requirements of the Chapter and shall provide local jurisdictions the opportunity to provide information to demonstrating as such. Additionally, the City recommends that CalRecycle include clarifying language that in CalRecycle's determination of penalties, CalRecycle may assess lower penalties for public entities, or include specific penalty ranges for jurisdictions. Furthermore, local jurisdictions are already subject to enforcement under existing law such as AB 939 and SB 1383. The City recommends that CalRecycle rely on existing enforcement mechanisms for local jurisdictions, rather than introducing a new and conflicting process that could lead to supplicative violations being assessed.

Response to O-13-22

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change to specify that local jurisdictions are not subject to enforcement prior to being provided the funding required to implement their programs is not necessary to the implementation or enforcement of the Act. While section 18980.8(g) of the proposed regulations clarifies the type and scope of costs incurred by local jurisdictions due to requirements of the Act that a PRO or Independent Producer is required to pay, nothing in the Act provides that a local jurisdiction's compliance obligation under the Act is conditioned on the local jurisdiction having received adequate support and payment from a PRO.

Additionally, section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to

$50,000 per day per violation against a noncompliant local jurisdiction consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-13-23

5. Section 18980.8(h): Dispute Resolution Process

The City continues to be opposed to Section 18980.8(h)(4)(E), which states, "Unless the parties agree otherwise, arbitration and mediation fees shall be apportioned equally among the parties. Each party shall be responsible for their own attorney's fees." This language creates a strong inequity in which parties can afford to engage in arbitration if needed. The resources that local jurisdictions have to participate in an arbitration process are not comparable to the resources that the PRO or Independent Producers have to engage in the same process. As currently written, many local jurisdictions will be functionally unable to enter into a dispute resolution process, thereby making this process unavailable should they strongly disagree with a PRO's decision on covered costs.

Additionally, it would be helpful to clarify the circumstances under which a local recycling service provider would initiate the dispute resolution process, instead of a local jurisdiction—as well as the role of recycling service providers when jurisdictions initiate the dispute, if any (and vice versa).

i. Recommendation: Delete Section 18980.8(h)(4)(E) and amend Section 18980.8(4) to specify that the costs of local jurisdictions to participate in a dispute process, including potential arbitration costs, must be reimbursed by the PRO, independent of the final results of the dispute. This would ensure that the cost of arbitration processes is not borne by ratepayers or taxpayers.

ii. Recommendation: Amend Section 18980.8(h) to require documentation of the results of dispute processes and outcomes between the PRO and local jurisdictions or recycling service providers and state that CalRecycle will make this information publicly available. This aligns with the transparency goals of SB 54 and will help ensure that negotiations are being handled more consistently, efficiently, and equitably across jurisdictions.

Response to O-13-23

CalRecycle rejects this comment. Regarding the first recommendation, section 18980.8(h)(4)(E) ensures that local jurisdictions and recycling service providers can never be burdened with paying more than half of the arbitration fees. Because the PRO and Independent Producers can only achieve the

requirements of statute if local jurisdictions and recycling service providers undertake the necessary steps to improve collection and other infrastructure to achieve the requirements of PRC section 42050, there is adequate incentive for them to ensure that binding arbitration results in those necessary steps being taken. Furthermore, given that incentive, there is corresponding incentive for the PRO to agree to a different fee split for binding dispute resolution that the parties mutually consider appropriate; the parties would be free to agree, for example, that the PRO will reimburse all dispute resolution fees, provided that the local jurisdiction or recycling service provider take certain actions, along with the other reimbursed costs. Taken together, these mechanisms disincentivize unreasonable cost disputes, minimize the need to engage in dispute resolution processes to begin with, and protect against the commenter's concerns. While, as a general matter, the investments and costs incurred pursuant to SB 54 are to be covered by the PRO, disputes over what those costs are cannot reasonably be characterized as those costs themselves. Without clear instruction from the Legislature to insulate a party from the costs of resolving disputes, CalRecycle cannot interpret statute as authorizing it to shift all such costs on to the PRO. See, also, CalRecycle's responses to comments O-15-6 and O-63-10.

Regarding initiation of dispute resolution processes, no change is necessary. The statute and proposed regulations are unambiguous with respect to when either a local jurisdiction or recycling service provider may initiate the dispute resolution process: When there is a dispute over "determining and paying the reasonable posts pursuant to [PRC section 42051.1(g)(1)] that arise between the PRO and a local jurisdiction or a recycling service provider." PRC section 42051.1(g)(2). Neither that statutory text nor section 18980.8(h)(1) limit who may be a party to such disputes. The only requirement is that there be a dispute, as described in that provision, between the party initiating the process and the PRO or Independent Producer.

Regarding the recommendation of "documentation of the results of dispute processes and outcomes," CalRecycle declines to make such a change. Arbitration outcomes will necessarily be documented because section 1283.4 of the Code of Civil Procedure requires arbitration awards to be in writing. However, requiring the written decision itself to be made public is unnecessary. Nothing in the proposed regulations restricts the rights of parties to a dispute from distributing a written arbitration decision or disclosing the decision's substance. Moreover, records in local jurisdictions' possession concerning expenditures, revenues, and other financial matters are, as a legal matter, already subject to mandatory disclosure, and audit provisions of the statute guarantee transparency concerning payments by the PRO. Public Resource Code section 42064 requires annual independent audits of the PRO. The PRO must provide those audits to CalRecycle with annual reports, and CalRecycle must publish the audits, subject only to limitations concerning trade secrets. Similarly, CalRecycle has the authority to audit the PRO, which may encompass payments made to local jurisdictions and recycling service providers. CalRecycle is required to publish

those audits, subject only to limitations protecting trade secrets. See Public Resources Code section 42080(a) through (e).

Comment O-13-24

6. Section 18980.6.7: Eco-modulated Fee and Fee Schedule

The City appreciates the clear language included in subsection (a)(1) that initial fees charged to producers include "Estimated costs of implementing the plan, including the costs to cover the environmental mitigation requirements of section 42064 of the Public Resources Code." The City believes that local jurisdictions' and recycling service providers' covered costs should also be explicitly included in this section, to ensure that the PRO Plan must address these covered costs when creating an initial fee structure and make it clear that these covered costs are a key part of implementing the PRO Plan.

Recommendation: Amend Section 18980.6.7 as follows: "Estimated costs of implementing the plan, including the costs to cover the environmental mitigation requirements of section 42064 of the Public Resources Code and local jurisdictions' and recycling service providers' covered costs, as specified in PRC Sections 42051.1 and 42053(d)(1)."

Response to O-13-24

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. The recommended change is not necessary because local jurisdictions' and recycling service providers' covered costs clearly and indisputably fall within the meaning of the PRO's costs of implementing the plan, as that term is used in PRC section 42053(b) and section 18980.6.7(a) of the proposed regulations. That such covered costs fall within the scope of section 18980.6.7(a)(1) is further supported by the inclusion of such costs in PRC section 42051.1(j)(1)(B). Because there is no question as to whether such costs are required to be included and reflected in the PRO's initial fee structure, no change is necessary.

O-14: Deborah K Gregory (Deborah Gregory)

Comment O-14-1

Speaking as the President and on behalf of Ballona Creek Renaissance, a 25 year old non-profit that "Cleans, Greens, Educates, Advocates, and Beautifies the watershed area of the Ballona Creek", I am writing today to express my support of **SB54** in its' original format. In the past 15 years we have offered inland and Creekside cleanup events for up to 450 volunteers that have diverted up to 3 tons of plastic pollution annually. In Culver City, we have successfully banned the distribution of polystyrene and other single use plastic materials from entering our waste stream. When plastic

bags were banned in Los Angeles in 2014, we immediately saw a reduction of plastic bags during our events on the creek!

Chemical recycling is creating new problems with air quality and water quality, to name one major problem with the proposed weakening of SB54.

I have considered the Plastic Pollution Pandemic from many perspectives and have come to the simple conclusion that what we put out into our earth, air, and water always comes back to haunt us. Let's not kick this plastic pollution down the road any longer. Creating systems of elimination is of paramount importance. We are at the tipping point; businesses can no longer profit off of the loss of humans' quality of life.

Thank you,
Deborah Gregory

Response to O-14-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. Regarding "chemical recycling," the comment neither identifies any particular process ("chemical recycling" is a generic term) nor suggests alternative approaches for CalRecycle to consider.

O-15: Marin County Hazardous and Solid Waste Management Joint Powers Authority (Kimberly Scheibly)

Comment O-15-1

This letter is in response to the proposed regulatory text to implement SB 54 the Plastic Pollution Prevention and Packaging Producer Responsibility Act (2022) published on August 19, 2025. I am writing on behalf of the Marin County Hazardous and Solid Waste Management Joint Powers Authority (Zero Waste Marin), a regional governmental agency that represents the 11 Cities and Towns and Unincorporated County of Marin. Our mission is to protect natural resources by promoting source reduction of waste through reuse, repair, and more mindful purchasing. We appreciate the opportunity to provide feedback to CalRecycle on the current draft regulatory text for the implementation of SB 54.
We understand that the proposed regulatory text for SB 54 implementation went unsigned in the 2024-2025 process, and that many changes have been made based on the comments CalRecycle received from the Governor's Office, the Legislature, and members of the public. However, despite the additional revisions, Zero Waste Marin still has concerns over the sections outlined below.

Zero Waste Marin would like to reiterate the intent of the Legislature codified in Statute by section 42040 of the Public Resources Code, specifically related to local jurisdictions. We urge CalRecycle uphold this section as Staff consider Zero Waste Marin's comments.

42040(b)(2)
(A) Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is **intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of covered material.**
(B) It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.

Response to O-15-1

CalRecycle rejects this comment. This portion of the commenter's submission does not recommend changes to any specific provision of the proposed regulations or raise an objection related to the rulemaking process. As such, no response is required. To the extent other portions of the submission address the proposed regulations or the rulemaking process directly, CalRecycle has responded to those portions separately.

Comment O-15-2

Section 18980.2.(a) Categorically Excluded Materials, pages 19-22
(a) (2) In accordance with paragraphs (1) and (2) of subdivision (b) and with subdivision (d) of section 42060 of the Public Resources Code, packaging or packaging components used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration.
a. Zero Waste Marin urges CalRecycle to provide additional clarity to "if it is not reasonably possible". We believe that this further clarification will provide definitive positions on the inclusion or exclusion of packaging products for producers, the PRO, local jurisdictions, recycling service providers, and the public. The current breadth of exclusions as 18980.2.(a) is written now has the potential to nullify the intent of SB 54, and local jurisdictions must prepare for the anticipated costs based on which products are included or excluded.

Response to O-15-2

Comment accepted. As described in response to comment I-19-1, CalRecycle has revised 18980.2(a)(2) to clarify what it means to show that it is "not reasonably possible" to use alternative packaging that avoids conflicts with federal law and to ensure that packaging is only excluded from the definition of "covered material" when that showing has been made. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-15-3

(a) (6) Packaging for medical products. "Medical products" means products that are "drugs," as defined pursuant to paragraph (5), that do not require a prescription and satisfy at least one of the following criteria.
a. Per Senator Allen's office, the addition of over-the-counter (OTC) drugs into the categorically excluded materials list is a direct conflict with statute and the legislature's intent. Additionally, the final draft regulations of the 2024-2025 SB 54 regulatory process removed OTC drugs from being categorically excluded. PRC Section 42041 specifically only categorically excludes prescription drugs, and Zero Waste Marin would like to see that OTC drugs are removed from the excluded categories and included in the final SB 54 regulations. This packaging type is already well-suited for source reduction, packaging material changes, and reuse and refill, with multiple companies piloting alternatives.

Response to O-15-3

CalRecycle rejects this comment for the reasons provided in responses to comment O-49-1

Comment O-15-4

Section 18980.3.2.(f) Methodology for Recycling Rate Determination, page 60

• For a new covered material category created after 2024 for which insufficient information exists to calculate the recycling rate, the recycling rate shall be marked as "'pending"' and assumed to achieve the required rate under subdivision (c) of section 42050 of the Public Resources Code, as may be adjusted pursuant to section 42062 of the Public Resources Code.
o PRC 42040 reminds us that local jurisdictions have been the backbone of solid waste management and recycling in California, which among many other challenges, has required adapting in real time at additional unforeseen costs related to handling the ever-increasing inundation of packaging materials on the market and in our collection and sorting streams. It is significantly more difficult, and in many cases not possible, for local jurisdictions, recycling service providers, and material processors to find recycling markets for materials with which we have little or no familiarity. Zero Waste Marin asks that CalRecycle assume that new covered material categories marked as pending shall be presumed to not achieve the required recycling rate under subdivision (c) of PRC 42050, especially further considering the requirements of subdivision (aa)(3) of PRC 42041 that states to be considered recycled, covered material shall be sent to a responsible end market.

Response to O-15-4

Comment rejected. The commenter appears to misunderstand when local jurisdictions' obligation under Public Resources Code section 42060.5(a) (to include covered materials in categories listed pursuant to 42061(c) (recyclable) and (d) (compostable) in their collection and recycling programs) applies. Whether a covered material category satisfies the recycling rate requirements of Public Resources Code section 42050(c) is irrelevant to that obligation.

Accordingly, assuming a recycling rate to be sufficient, as described section 18980.3.2(f) of the proposed regulations, does not implicate the concerns the commenter raises over local jurisdictions' and recycling service providers' ability to find recycling markets.

Comment O-15-5

Section 18980.4.2.(b) End Market Compliance Audits and Verification, page 77

• Relating to annual compliance audits of responsible end markets. A [Producer Responsibility Organization] PRO or Independent Producer shall include the findings of any compliance audits in the annual report pursuant to section 18980.9.1(c). The Department shall have full access to any compliance audit reports upon request.
o As prescribed in PRC 42060.5. local jurisdictions must include all covered materials in their collection and recycling programs. Furthermore, under subdivision (aa)(3) of PRC 42041, **to be considered recycled, covered material shall be sent to a responsible end market**. To ensure that local jurisdictions fully comply with the mandates listed above, Zero Waste Marin believes that local jurisdictions should also be granted full access to any compliance audit reports upon request.

Response to O-15-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in section 42060 of the Public Resources Code, and the recommendation is not necessary to the implementation or enforcement of the Act. Section 18980.4.2(b) of the proposed regulations already requires a PRO to include the findings of any compliance audit in its annual report and to further give CalRecycle full access to the compliance audit report upon request. This proposed language strikes an appropriate balance between reducing burdens to the PRO and responsible end market by limiting mandatory initial disclosures to the audit findings and providing CalRecycle with the authority to inspect and review the full compliance audit if necessary. The audit findings that must be included in annual reports under section 18980.4.2(b) will provide local jurisdictions with sufficient information to comply with applicable obligations under the Act, including under PRC section 42060.5. Furthermore, as specified in section 18980.14(a) of the proposed regulations, and subject to the limitations set forth in that section, local governments have the opportunity to request and receive applicable records from CalRecycle, including any compliance audit report within its possession, pursuant to the California Public Records Act (Government Code Section 7920.000 et seq.). Therefore, local jurisdictions already have the opportunity to request and receive any compliance audit report that CalRecycle has received pursuant to its authority under section 18980.4.2(b) of the proposed regulations. No change is necessary.

Comment O-15-6

Section 18980.8.(h)(4)(E) Producer Responsibility Plan, page 118

• In relation to the PRO plan containing a dispute resolution process concerning determinations of whether, and to what extent, costs incurred by local jurisdictions or Recycling Service Providers are covered costs; "Unless the parties agree otherwise,

arbitration and mediation fees shall be apportioned equally among the parties. Each party shall be responsible for their own attorney's fees".
o Although Zero Waste Marin seeks to resolve matters collaboratively and avoid arbitration with the PRO, we want to ensure that all local jurisdictions' costs are covered as prescribed in subdivision (b)(2) of PRC 42040. Zero Waste Marin recommends that CalRecycle revise the draft regulatory text to state that, 'If the arbitration panel determines that additional reasonable costs shall be covered by the PRO, the PRO shall also be responsible for covering the costs incurred by a local jurisdiction in connection with the arbitration process".

Response to O-15-6

CalRecycle rejects this comment. Section 18980.8(h)(4)(E) ensures that local jurisdictions and recycling service providers can never be burdened with paying more than half of the arbitration fees. Because the PRO and Independent Producers can only achieve the requirements of statute if local jurisdictions and recycling service providers undertake the necessary steps to improve collection and other infrastructure to achieve the requirements of PRC section 42050, there is adequate incentive for them to ensure that binding arbitration results in those necessary steps being taken. Furthermore, given that incentive, there is corresponding incentive for the PRO to agree to a different fee split for binding dispute resolution that the parties mutually consider appropriate; the parties would be free to agree, for example, that the PRO will reimburse all dispute resolution fees, provided that the local jurisdiction or recycling service provider take certain actions, along with the other reimbursed costs. Taken together, these mechanisms disincentivize unreasonable cost disputes, minimize the need to engage in dispute resolution processes to begin with, and protect against the commenter's concerns. While, as a general matter, the investments and costs incurred pursuant to SB 54 are to be covered by the PRO, disputes over what those costs are cannot logically be characterized as those costs themselves. Lastly, the proposed change would risk unfair or absurd results because even a nominal increase in the covered costs would result in the PRO being responsible for all arbitration costs.

Comment O-15-7

Section 18980.13.(i) Compliance Evaluation and Determination, pages 151-152

• Violations by a local jurisdiction.
o Zero Waste Marin was disappointed to see that the same level of enforcement and administrative fines applied to producers and the PRO would be applied to local jurisdictions: up to $50,000 per day, per violation. These amounts are up to 5x those of SB 1383 and are a direct conflict with the intent of the Legislature.
o Zero Waste Marin urges CalRecycle to revise subdivision (i) of Section 18980.13 of the draft regulations to clarify that local jurisdictions shall be subject to lower maximum fine amounts, consistent with legislative intent and similar statutory frameworks.

Response to O-15-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant local jurisdiction consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-15-8

Zero Waste Marin thanks CalRecycle for providing the opportunity to collaboratively develop regulations that ensure the intent of the Legislature is reflected in the final text. We welcome any additional questions from CalRecycle or further conversations related to our comments. Thank you.

Response to O-15-8

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-16: City of Watsonville Solid Waste Division (Tami Stolzenthaler)

Comment O-16-1

To Whom it May Concern: Santa Cruz County Integrated Waste Management Local Task Force Member agencies have reviewed the draft regulations, focusing especially on Article 3 regarding Evaluations of Covered Material and Covered Materials Categories and Article 11 regarding the Requirements, Exemptions, and Extensions for

Local Jurisdictions and Recycling Service Providers. While we worked together to prepare these comments, our member agencies will approve and submit their comments individually, given the challenges to submit as a commission within the 45-day comment period.

Response to O-16-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

Comment O-16-2

Article 3: Evaluations of Covered Material and Covered Material Categories

Our general comments on Article 3 are that the regulations defining recyclable and compostable materials should also consider the environmental impacts of where and how the materials can be recycled and/or composted. If the goal of SB 54 is to create a circular economy, it should also be to create that economy in California. Recycling and composting should happen close to home to reduce greenhouse gas emissions from transporting materials to distant lands. The impacts of reprocessing covered materials should also be considered to make sure that reprocessing methods are safe for surrounding communities, the materials are safe for their use in the marketplace, and covered materials are used for new products that reduce waste. Our specific comments and recommendations are outlined below:

Response to O-16-2

Comment rejected. No response to this introductory portion of the commenter's submission is necessary because it is an overview of the issues raised in later portions. This portion states the commenter's broad concerns only and does not set forth proposed changes to the regulatory text for CalRecycle to consider. CalRecycle has responded to the subsequent, more specific portions of the submission separately.

Comment O-16-3

Section 18980.3.1(c) effectively limits the types of relevant information and evidence that the public may present in comments by restricting the information that CalRecycle will consider when determining recyclability. We recommend the following revision to broaden CalRecycle's public outreach responsibilities when considering the recyclability of covered materials.

Recommended Change to CalRecycle's Proposed Regulation:

(c) If the Department preliminarily identifies a covered material category pursuant to subdivision (b), it shall publish the basis for its determination on its website. The Department shall provide an opportunity for public engagement and allow public comment and submission of relevant information and evidence. The Department shall

consider comments and submissions only to the extent that they address the following with respect to the covered material category:

(1) The likelihood that the covered material category will satisfy the requirements of paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code before the next mandatory update to the material characterization study.

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

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

(4) For assertions that such disruption would be caused by the inability to lawfully label particular covered material as “recyclable” or with the chasing arrows symbol, submissions must address, in addition to the factors identified in paragraphs (1) through (3):

(A) How, and to what extent, absence of the covered material category from the recyclable covered material category list inhibits particular covered materials from being considered recyclable pursuant to paragraphs of subdivision (d) of section 42355.51 of the Public Resources Code other than paragraph (2), such as paragraph (4), (5), or (6).

(B) How labeling the covered material as “recyclable” or with the chasing arrows symbol affects consumer behavior, including with respect to disposal for collection by local recycling programs, in a way that will affect whether collection, sorting, and development of responsible end markets will increase.

(C) How, if at all, use of the term “recyclable” or the chasing arrows symbol on labels otherwise will affect collection and sorting operations of recycling programs and development of responsible end markets.

(D) How, if at all, the ability to label items as “recyclable” or with the chasing arrows symbol affects existing alternative collection programs, such as takeback systems, or will affect anticipated alternative collection programs.

(5) Any other relevant recycling information related to the covered material category, including but not limited to its environmental impact, greenhouse gas footprint, product safety, or reuse potential within the state of California.

Response to O-16-3

Comment rejected. Section 18980.3.1(c) of the proposed regulations covers all elements of Public Resources Code section 42061(a)(3)(B), listing the topics that are relevant to each of those elements. Relevance is dictated by statute, and, because the proposed regulation addresses all the elements of 42061(a)(3)(B), no other information can logically be relevant. Notably, the additional topics proposed by the commenter—environmental impact, greenhouse gas footprint, product safety, and reuse potential—have any potential relevance to the considerations permitted under section 42061(a)(3)(B) except to the extent they overlap with the topics listed in 18980.3.1(c).

Comment O-16-4

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Our general comments on Article 11 are that the proposed regulations place unusual hardships on local jurisdictions regarding the short compliance timeframes and annual update requirements outlined in the proposed regulations. Local agencies spend considerable resources on outreach materials to educate the public about recycling and organics acceptance policies. Frequent change to those policies creates confusion and is frustrating for the public. Regular periodic change is a more effective implementation strategy to obtain compliance and is a better use of scarce local government resources. Our specific comments and recommendations are outlined below:

Response to O-16-4

CalRecycle rejects this comment as explained in response to comment O-16-5, which is a continuation of this comment and includes the change the commenter recommends.

Comment O-16-5

Section 18980.11(a) requires local agencies to change their recycling and organics collection policies on the same day that CalRecycle approves the PRO's plan.

Recommended Change to CalRecycle's Proposed Regulation:
(a) ~~No later than~~ Within two years of the date the Department first approves a PRO's plan, local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list pursuant to subdivisions (c) and (d) of section 42061 of the Public Resources Code. For all purposes under the Act, the term "recycling programs" encompasses composting-related collection and processing.

Response to O-16-5

CalRecycle rejects this comment. There is no indication in statute that the Legislature intended for the requirement that local jurisdictions include certain

covered material categories in their recycling programs not to take effect until two years after the date the Department first approves a PRO's plan. That timeline would be incongruous, given that recycling rates requirements must be satisfied by January 1, 2028, and that statute required CalRecycle to publish the covered material categories list far in advance of that date. Moreover, the commenter's concerns are adequately addressed by PRC section 42060.5(b), under which a jurisdiction is entitled to an exemption if it cannot practicably comply with 42060.5(a).

Comment O-16-6

Section 18980.11(c) requires local agencies to change their recycling and organics collection policies within one year after a change to the CMC list. Frequent policy change is frustrating for the public and leads to waste sorting non-compliance. Local agencies recommend periodic change that is predictable for local agencies and the public.

Recommended Change to CalRecycle's Proposed Regulation:

(c) As provided in subdivision (g) of section 18980.2.5, ~~a~~ changes to the CMC list pursuant to subdivision (e) of 42061 of the Public Resources Code that impose~~s~~ additional obligations on local jurisdictions or recycling service providers does not affect the obligations of local jurisdictions or recycling service providers under subdivision (a) of section 42060.5 of the Public Resources Code until those changes are compiled and released by the Department on a five year cycle to be implemented one year after the compiled list is released by the Department~~hange~~. If a local jurisdiction or recycling service provider submits a request to the Department for an extension or exemption pursuant to subdivision (b) of section 42060.5 of the Public Resources Code before the end of that one-year period, the requirement of subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect with respect to the additional obligations until the Department decides whether to grant or deny the request.

Response to O-16-6

CalRecycle rejects this comment. A period of one year balances the need to implement the Act, as a standard period longer than one year would delay the positive results expected from the change and would often exceed the period local jurisdictions reasonably require for updating their recycling programs, while a shorter period might be impracticable for a local jurisdiction or recycling service provider. Further, the ability to request an extension allows for added flexibility as CalRecycle may identify an effective date later than the publication date in cases where it anticipates those affected by the change may need a longer period to implement the update successfully.

Comment O-16-7

Section 18980.11.1(b) provides for an exemption or extension period of up to two years, however **Section 18980.11.1(g)** allows CalRecycle to repeal and exemption or extension upon its determination that conditions have changed with no time specified

when the change will take effect. We recommend that all exemptions or extensions be for a minimum of five years and that no change take effect sooner than the expiration of the time remaining on the exemption or extension already granted or for an additional six months from the date notice is given, whichever is longer.

Recommended Change to CalRecycle's Proposed Regulation:

Section 18980.11.1(b) For purposes of this section, "exemption" also refers to an "extension." An extension differs from an exemption only in that an exemption becomes effective upon approval and exempts the applicant from the requirement for ~~two~~ five years, whereas an extension may be granted before the requirement has taken effect and results in delaying the requirement's applicability for ~~two~~ five years beyond when it otherwise would have taken effect.

Section 18980.11.1(g) The Department shall repeal the extension or exemption if it determines that conditions, circumstances, or challenges no longer render compliance impracticable as described in the application. Repeal of the extension or exemption will take effect on the end date of the extension or exemption or six months after notice from the Department to the local agency, whichever term is longer.

Response to O-16-7

Comment rejected. Regarding the proposed change in section 18980.11.1(b), the proposed regulations cannot implement that change because increasing the exemption period to five years would directly conflict with the statutory provision establishing the exemption. The relevant provision is in PRC section 42060.5(b), which states that the exemption must be reviewed every two years and may only be renewed after that two-year review.

Regarding the proposed change in section 18980.11.1(g), CalRecycle declines to make that change because it would subvert the purpose of Public Resources Code section 42060.5(a); an exemption that is no longer justified by impracticability no longer has any statutory basis to exist, and the statute does not prohibit CalRecycle from repealing an exemption when the conditions underlying CalRecycle's approval of it no longer exists. The statute only requires that CalRecycle not renew exemptions unless it reviews them within two years. Moreover, if the exemption could not be cut short when that justification no longer exists, local jurisdictions and recycling service providers would not have incentive not to resolve that impracticability. Lastly, under the proposed change, extensions would last two years even if it were clear that, upon submission of the application, the justification for the exemption could not reasonably be expected to persist that long. At the extreme, CalRecycle would be statutorily required to approve a two-year extension based on a condition known to expire almost instantly after such approval. Consistent with longstanding statutory interpretation principles, CalRecycle declines to interpret statute to permit such an absurd result.

Comment O-16-8

Section 18980.11.1(c)(4) requires local agencies to submit an extraordinary amount of detailed information in an application to request a two-year extension or exemption for CalRecycle to delay local implementation of changes to the local jurisdictions acceptance policies under the proposed one-year collection policies outlined in sections 18980.11(a) and (c). We recommend a more flexible application process that allows the local agency to include relevant information in its application without CalRecycle automatically disqualifying applications that fail to meet one or more currently "required" application elements.

Recommended Change to CalRecycle's Proposed Regulation:

(c)(4) A description, with supporting documentation, of the specific local conditions, circumstances, and challenges that make it impracticable for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their collection and recycling programs. The description must demonstrate that the identified material cannot practicably be included in the collection and recycling programs. The description ~~must also address, at a minimum, the necessity of~~ should address the need for the exemption with respect to the following considerations as they apply to the local jurisdiction's collection program: program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; ~~and~~ transportation safety; absence of responsible end markets; funding constraints analysis; and other relevant local waste management program considerations.

Response to O-16-8

Comment rejected. The suggested changes would result in no change in the proposed regulation's meaning. Under any reasonable reading, the proposed text only requires applications to discuss in detail the factors listed in 18980.11.1(c)(4) to the extent they apply to the local jurisdiction's collection program. The proposed text is preferable to the commenter's proposed text because it requires applicants to state affirmatively whether each item supports the alleged necessity of the exemption. Regarding the additional items the commenter proposes for the end of (c)(4), CalRecycle declines to add them because they would be redundant with the text already in (c)(4), as read in combination with section 18980.11 regarding availability of responsible end markets.

Comment O-16-9

Section 18980.11.1(d) requires local agencies to submit their extension or exemption applications to the PRO and to CalRecycle for review, comment, and determination. While we do not object to this submission requirement, we recommend that all applications and other communications related to an application be made at a single location, that all interested parties have access to the information in real time, and that review periods run concurrently. This will make the application and review process run

more smoothly for local jurisdictions, the PRO, Independent Producers, and CalRecycle.

Recommended Change to CalRecycle's Proposed Regulation:

(d) ~~No e~~Exemption applications and ~~or~~ renewal requests shall be submitted to the Department, the PRO, and Independent Producers at a single application portal specified by the Department. ~~until after the local jurisdiction or recycling service provider has provided all PROs and Independent Producers the application or advance notice of the renewal request.~~ All PROs and Independent Producers shall have 90 days to review an application, and 30 days to review a notice of a renewal request. During the review period:

(1) Each PRO and Independent Producer may submit comments to the applicant through the application portal specified by the Department concerning the assertion that collection is impracticable and the relevant conditions, circumstances, and challenges.

(2) Each PRO and Independent Producer shall notify the applicant in writing through the application portal specified by the Department whether they object to the exemption or extension sought. If a PRO or Independent Producer provides no such notice, they will be deemed not to object.

(3) Using the application portal specified by the Department, ~~T~~the parties may agree to extend the 90- or 30-day period or come to an agreement concerning the collection and recycling or composting of the covered materials or covered material categories at issue.

(4) The Department will have access to all communications between the PRO or Independent Producer and the applicant contained within the application portal and may incorporate those communications into its evaluation of the application or renewal request.

Response to O-16-9

Comment partially accepted and partially rejected. CalRecycle accepts the recommendation to require that applications be submitted via an online portal. Section 18980.11.1(c) and (h)(2)(C) have been revised accordingly. CalRecycle has not adopted the specific text the commenter proposes for subdivision (d), however, because that text would fail to account for the possibility that such a portal may not yet be operational, in which case email submissions must be permitted. CalRecycle also declines to require the use of a portal for comment submissions and communications between the PRO (or Independent Producer) and the applicant, with CalRecycle having access to all such communications. Establishing such a system would add significant technical complexity, might conflict with recordkeeping practices and requirements of the involved parties, would be unnecessarily intrusive, and would likely encompass communications that are not relevant to CalRecycle's evaluation of applications. Allowing "all

interested parties to have access to the information in real time" would also greatly increase the technical requirements of an online portal, and the benefit of such access is unclear, considering the process set forth in section 18980.11.1 does not involve public comment, and the comments submitted to the applicant must be included with the application (and thus will become public records). Regarding the recommendation "that review periods run concurrently," CalRecycle cannot respond because it cannot discern what that recommendation means. If the commenter intended to suggest that CalRecycle should review the merits of an application at the same time the PRO and Independent Producers do so, CalRecycle rejects that suggestion because the applications are not final until the applicant considers the comments it receives from the PRO and Independent Producers.

O-17: The Story of Stuff Project (Alexandria Choy)

Comment O-17-1

My name is Alexandria Choy, I live in Southern California and am commenting on behalf of The Story of Stuff Project.

Plastic litters communities, poses threats to human health, is a major contributor to climate change, and disproportionately impacts vulnerable communities near plastic production and disposal facilities. Every year, an estimated 33 billion pounds of plastic end up in our oceans. And every year, California communities spend more than $428 million to deal with pollution from plastic and other waste.

The current regulations do not protect against chemical recycling. "Chemical recycling" and "advanced recycling" are mostly a new euphemism for an old and dirty practice: incineration. Plastics-to-fuel plants are not recycling, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. It creates toxic pollutants that harm our environment and threaten public health. This is not a solution to the plastic waste crisis.

CalRecycle must strengthen the regulations by (1) dismissing chemical recycling as a covered recycling technology, as it is *not* real recycling, and (2) not allowing for broad exclusions of packaging (food and ag products and over-the-counter drugs).

California is at a pivotal moment in the global fight against plastic pollution. Let's rise to the opportunity, not waste it.

Response to O-17-1

Comment partially rejected and partially accepted. Regarding chemical recycling, CalRecycle rejects this comment for the reasons stated in response to comments I-6-1, I-28-1, and O-62-1. Regarding over-the-counter-drugs, CalRecycle rejects this comment for the reasons stated in response to comment O-49-1. CalRecycle accepts this comment, however, to the extent it asserts that

the exclusion for food and agricultural packaging, as set forth in section 18980.2.1(a)(2), might have been inappropriately broad in application. See CalRecycle's response to comment I-19-1 for explanation of the effects of the revisions made to that provision. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-18: Friends Committee on Legislation of California (Jim Lindburg)

Comment O-18-1

We appreciate that Gov. Newsom signed SB 54 into law. However, as Cal Recycle moves forward with implementation, we would like to emphasize two primary objections to the draft regulations that would fundamentally undermine the intent of the legislation. The proposed regulations include:

1) Broad exemptions for the packaging of over-the-counter drugs and packaging for food and agricultural commodities.

2) Weakened protections against chemical recycling.

According to CALPIRG, plastic sent to so-called chemical recycling facilities is almost always incinerated. It produces 96 dangerous air pollutants and is far worse for the environment than virgin plastic production. Moreover, the proposed packaging exemptions are not justified and will accelerate global plastic pollution.

California is a respected environmental leader. Despite industry objections, we have demonstrated repeatedly that we can have a strong economy and regulate harmful pollutants. How California implements SB 54 will undoubtedly influence how other states regulate plastic pollution.

Therefore, FCLCA urges Cal Recycle to strengthen the implementation of SB 54 by eliminating the proposed packaging exceptions and by utilizing real recycling technology as opposed to harmful chemical recycling.

Response to O-18-1

Comment partially rejected and partially accepted. Regarding chemical recycling, CalRecycle rejects this comment for the reasons stated in response to comments I-6-1, I-28-1, and O-62-1. Regarding over-the-counter-drugs, CalRecycle rejects this comment for the reasons stated in response to comment O-49-1. CalRecycle accepts this comment, however, to the extent it asserts that the exclusion for food and agricultural packaging, as set forth in section 18980.2.1(a)(2), might have been inappropriately broad in application. See CalRecycle's response to comment I-19-1 for explanation of the effects of the revisions made to that provision. See, also, CalRecycle's response to comment

B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-19: California Grocers Association (Daniel Conway)

Comment O-19-1

For more than 125 years, the California Grocers Association (CGA) has served as the voice of the state's grocery community. A nonprofit, statewide trade association, CGA's membership is comprised of over 300 retailers operating more than 6,000 brick-and-mortar stores, and approximately 150 grocery supply companies.

CalRecycle's Impact Statement identifies two primary categories of affected businesses: companies that qualify as producers of covered materials and are subject to direct regulation under this Act, and businesses that will experience indirect impacts through higher costs for goods and services resulting from the regulation (page 4). Depending on a business' relationship to a covered material when it is imported, sold, distributed or used in California, numerous CGA members are expected to be affected in both categories.

Grocery stores that are "producers" under this Act anticipated to be impacted under the following circumstances:

- When importing products from other states or countries for sale in California that are manufactured and packaged into covered materials, including primary packaging (e.g., paper boxes, plastic bags and containers) and transportation packaging (e.g., cardboard boxes, pallet wrap).
- When commercially selling, offering for sale, or distributing private label packaged products grown, processed, or manufactured in California and packaged in a covered material.

Grocery stores identified as "producers" under this Act anticipate costs related to the following:

- Packaging material sourcing to meet the recyclable/compostable material 2032 deadline and all associated packaging redesign costs.
- Ensuring that suppliers provide compliant packaging and making associated vendor contract modifications.
- Reporting total weight of covered materials and plastic components sold, distributed or imported in or into the state; total weight of material that is recycled and total weight of that disposed of.
- Fee payments to the Producer Responsibility Organization.

CalRecycle estimates the total estimated cost of switching packaging from one covered material (plastic) to another (recyclable plastics and other existing material categories, such as paper, metal, glass, and compostable packaging), would be $10.2 billion (Impact Statement, page 14). These costs applied to the grocery sector will directly increase costs for both grocers and customers.

The direct production costs CalRecycle estimates as they relate to California's retail trade sector (Impact Statement, page 21) are $1.4 billion. U.S. food prices rose by 23.6 percent from 2020 – 2024, with food prices in 2022 alone increasing faster than any year since 1979.1 This added cost to consumers will likely exacerbate the rising national food insecurity trends which the United States Department of Agriculture has documented to be 13.5 percent of all U.S. households, an increase from 10.5 percent in 2020.

The implementation of this rule will lead to numerous complex economic effects, and these costs are anticipated to reach many hundreds of millions of dollars, directly affecting both consumers and grocers. We value the opportunity to provide our perspective on how the Act will affect and influence California's grocery sector. Please contact us with any questions.

Response to O-19-1

Comment rejected. The comment is informational only; it explains how implementation of the statute will affect grocery stores and their customers. No response is required because the commenter suggests no changes to the proposed regulations or raises an objection related to the rulemaking process.

O-20: Consumer Healthcare Products Association (Carlos Gutierrez)

Comment O-20-1

The Consumer Healthcare Products Association1 respectfully submits these comments on CalRecycle's proposed permanent regulations implementing SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

While we commend CalRecycle for appropriately excluding nonprescription drugs from the scope of SB 54's requirements, we respectfully oppose the proposed limitation that would exclude nonprescription drugs that are also cosmetics, soaps, or contain sunscreen active ingredients from this exemption. We urge CalRecycle to expand the medical products exclusion to encompass ALL nonprescription drugs, consistent with federal law, legislative
intent, and national best practices.

Response to O-20-1

CalRecycle rejects this comment for the reasons stated in response to comment B-11-3.

Comment O-20-2

Legal Foundation for Comprehensive Drug Exemption

SB 54 explicitly exempts "medical products" from its scope, referencing Title 21 of the United States Code, sections 321(g) and 321(h). Under federal law, nonprescription drugs are unequivocally "medical products" as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(g). This federal definition provides a comprehensive framework for
drugs that makes no distinction between prescription and nonprescription medications.

The deliberate incorporation of this expansive federal terminology in SB 54 clearly signals legislative intent to extend the exemption beyond prescription drugs to include all pharmaceutical products. Had the legislature intended to limit the exemption solely to devices and prescription drugs, the inclusion of the broader phrase "medical product" would have been unnecessary. This statutory construction demonstrates that all over-the-counter medications were intended to be exempt alongside prescription medications.

FDA Principle: A Drug is a Drug

The Food and Drug Administration (FDA) maintains a fundamental principle that governs pharmaceutical regulation: a drug is a drug, regardless of its additional properties or classifications. This principle recognizes that products meeting the statutory definition of a drug under 21 U.S.C. Section 321(g) retain their essential character as pharmaceutical
products, even when they may also qualify as cosmetics or possess other characteristics. All FDA-regulated over-the-counter (OTC) drugs—identified by their required "Drug Facts" panel—are medical products under federal law, and the fact that some provide secondary benefits such as cosmetic, cleaning, or sunscreen properties does not alter their
fundamental status as OTC drugs.

The exclusion of nonprescription drugs from SB 54's requirements recognizes the unique packaging requirements necessary to maintain product integrity, safety, and efficacy for all pharmaceutical products. These packaging requirements serve critical public health functions that cannot be compromised by regulatory distinctions based on secondary product characteristics. OTC products must meet stringent FDA criteria for maintaining active ingredient levels and concentrations throughout their shelf life, whether in medications, mouthwashes, or toothpastes. The structural integrity required to prevent moisture and vapor transmission—essential for preserving active pharmaceutical

ingredients—cannot be achieved through traditional plastic reduction methods without compromising the products' regulatory compliance. Additionally, Consumer Product Safety Commission requirements for child-resistant closures under the Poison Prevention Packaging Act create further constraints that make meeting reduction targets untenable
for FDA-regulated OTC products while maintaining their essential safety and efficacy standards.

Concerns with Current Regulatory Interpretation

CalRecycle's Initial Statement of Reasons suggests that under the draft regulation, over-the-counter (OTC) drugs also regulated as cosmetics would not be exempt from SB 54's requirements. The examples provided include dandruff shampoo, antibacterial hand soap, and antiperspirant. This interpretation creates several significant concerns:
• **Regulatory Uncertainty:** This approach introduces ambiguity that could extend to numerous other nonprescription drug categories, including oral care products and various other over-the-counter medications.
• **Undermining Statutory Text:** This interpretation contradicts the clear language in SB 54 that was adopted to exclude all nonprescription drugs from the Act's scope.
• **Inconsistent Application:** Creating distinctions among different types of nonprescription drugs based on secondary characteristics undermines the uniform treatment that federal law provides to all pharmaceutical products.

National Consistency in EPR Legislation

The exclusion of all nonprescription drugs is consistent with the national trend in extended producer responsibility (EPR) packaging legislation. Since California's passage of SB 54, multiple states have recognized the importance of exempting all OTC drugs from EPR requirements:

States with Enacted EPR Legislation Include:

• **Colorado** - Exempts all drugs from scope
• **Washington** - Exempts all drugs from scope
• **Oregon** - Exempts all drugs from scope
• **Maryland** - Exempts all drugs from scope
• **Minnesota** - Exempts all drugs from scope

This consistent approach across jurisdictions reflects a shared understanding of the unique nature of pharmaceutical products and the importance of maintaining uniform regulatory treatment for all drugs.

Governor's Directive on Regulatory Impact

The current draft regulations must also address the concerns raised by Governor Newsom when he declined to adopt CalRecycle's initial draft regulations on March 7,

2025. The Governor's decision specifically cited concerns that the proposed rules would impose excessive costs on businesses and consumers. The current approach of excluding some over-the-counter medications while subjecting others to SB 54's requirements runs contrary to this directive. By creating artificial distinctions among nonprescription drugs, the regulation increases compliance complexity and costs without providing meaningful environmental benefits.

Public Health and Economic Considerations

Subjecting certain categories of nonprescription drugs to SB 54's requirements while exempting others could:
• **Increase Healthcare Costs**: Additional regulatory compliance costs for essential healthcare products may be passed on to consumers, making these products less accessible.
• **Create Supply Chain Disruptions**: Different regulatory requirements for similar products could complicate manufacturing and distribution processes.
• **Compromise Product Safety**: Packaging modifications required for regulatory compliance could potentially affect product integrity, safety, or efficacy.
• **Generate Consumer Confusion**: Different regulatory treatment of similar pharmaceutical products could create marketplace confusion.

Response to O-20-2

CalRecycle rejects this comment for the reasons stated in response to comment B-11-3. CalRecycle also notes that the commenter's claim that "nonprescription drugs are unequivocally "medical products" as defined by the Federal Food, Drug, and Cosmetic Act" is erroneous. That term is not defined or otherwise used in the law cited.

Comment O-20-3

Recommended Regulatory Modification
CHPA respectfully requests that CalRecycle modify the medical products exclusion in Article 2 to include ALL nonprescription drugs, regardless of any additional classifications they may carry as cosmetics, soaps, or products containing sunscreen active ingredients.

This modification would:
• Align California's regulations with federal pharmaceutical law
• Respect clear legislative intent demonstrated in SB 54
• Maintain consistency with national EPR legislation trends
• Address Governor Newsom's concerns about regulatory cost and complexity
• Preserve the integrity of pharmaceutical packaging requirements
• Ensure uniform treatment of all nonprescription drugs

Response to O-20-3

This comment is a continuation of comments O-20-1 and O-20-2 and is rejected along with those comments.

Comment O-20-4

Conclusion

We appreciate CalRecycle's recognition of the importance of excluding nonprescription drugs from SB 54's requirements, which demonstrates an understanding of the unique nature of pharmaceutical products. However, we remain deeply concerned that this exclusion does not extend to all over-the-counter drugs, particularly those that may also be classified as cosmetics, or contain sunscreen active ingredients.

The medical products exclusion should encompass all nonprescription drugs to ensure that essential healthcare products are not subject to requirements that could increase costs or create supply chain disruptions without meaningful environmental benefit. This comprehensive approach would respect federal law, honor clear legislative intent, maintain national consistency with other EPR programs, and serve the broader public interest by preserving access to affordable healthcare products.

We appreciate CalRecycle's consideration of these comments and stand ready to provide additional information or clarification as needed during the regulatory development process.

Response to O-20-4

This comment is a continuation of comments O-20-1 through O-20-3. and is rejected along with those comments.

O-21: North American Insulation Manufacturers Association (Curt rich)

Comment O-21-1

The North American Insulation Manufacturers Association (“NAIMA”) submits these comments on the California Department of Resources Recycling and Recovery’s (“CalRecycle”) proposed regulations under SB 54 (the Plastic Pollution Prevention and Packaging Producer Responsibility Act). NAIMA is the trade association representing North American manufacturers of fiber glass and rock and slag wool insulation. NAIMA promotes energy savings through building envelope energy efficiency. Three of the four fiber glass insulation manufacturers in the U.S. – CertainTeed (Chowchilla), Johns Manville (Willows), and Knauf (Shasta Lake) – manufacture in California to serve the California market.

The fiber glass and mineral wool insulation industry is committed to advancing waste reduction, recycling, and a circular economy objective. U.S. manufacturers of these products have established goals to reduce and recover plastic packaging. The products we manufacture also contain substantial recycled content. For example, the fiber glass

insulation industry is the second largest user of recycled glass cullet in California. Insulation also plays a critical role in California's ambitious greenhouse gas reduction goals. Insulation is the only building material whose core purpose is the reduction of building energy usage.

NAIMA requests that SB 54 implementation be tailored to recognize the unique characteristics of construction materials and avoid imposing additional costs to products that directly impact the cost of housing in the state with limited impact to the goals of SB 54. Specifically, NAIMA requests CalRecycle to **explicitly exclude**: (a) plastic packaging used to protect construction products (including insulation), and (b) wood pallets from the scope of SB 54. The justification for this request and recommended regulatory language follows.

Response to O-21-1

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for plastic packaging used to protect construction products and wood pallets. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

Comment O-21-2

EXCLUSION OF CONSTRUCTION MATERIAL PACKAGING

Construction materials require protective packaging to guarantee product performance. Insulation (and other construction materials) require packaging to preserve dimensional integrity, resist outside moisture, prevent contamination, and avoid damage during transport and on-site handling. Without such protection, thermal performance, fire resistance, and durability could be compromised, undermining product performance. Importantly, packaging used on fiber glass and mineral wool building products not only protects but also provides compression of the products during transport, thereby enabling the reduction of plastic packaging at the source, improving jobsite handling and saving energy usage associated with transportation and storage of the building products.

Packaging failures lead to waste, not reuse. Reducing packaging materials for insulation beyond functional requirements can result in compromised performance and packaging failures. Ifinsulation is damaged or degraded during shipment or storage, it effectively becomes waste. The environmental gains of recycling packaging are thus overshadowed by increased waste, rework, or premature replacement of the primary product.

Jobsite recovery and recycling limitations. Packaging for construction materials is typically removed at job sites where waste sorting, collection, and recycling infrastructure may not exist. Unlike consumer packaging, construction waste is handled within the construction waste stream and not through municipal collection systems. Imposing EPR obligations on packaging of construction materials would require building new logistics or carry steep administrative burdens with limited recovery gains.

Risk of product price increases. Imposing a fee on construction packaging could increase material costs for insulation and other building materials. Such added regulatory costs will have an impact on insulation pricing, which will have an impact on the cost of housing and the home energy efficiency retrofit market in California.

RECOMMENDATION ON REGULATORY TEXT
"Excluded from the scope of 'packaging' are plastic protective wrappings, films, liners, and covers used expressly to transport, protect, or store construction products (such as insulation, ceiling panels, drywall, roof shingles and sheathing), provided such packaging is removed at the construction site and is managed within the construction and demolition waste stream."

Response to O-21-2

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for plastic packaging used to protect construction products. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

Comment O-21-3

EXCLUSION OF WOOD PALLETS
Pallets are durable, reusable transport platforms. Wood pallets are designed for repetitive use across transportation cycles. They are not single-use packaging in the sense envisioned by SB 54. Many pallet users already employ internal reuse, rental, repair, and exchange systems. In the case of the insulation industry, manufacturers overwhelmingly use purchased wood pallets for the production transportation to distributors and retail sellers. Upon delivery, our customers take possession of the pallets, which are then reused or sold for reuse.

Wood pallets have exceptionally high recovery rates. Pallets are integral for delivery and transport for numerous businesses, not just the construction industry, resulting in an existing robust pallet reuse and repair industry. The pallet industry reports that wood pallets constitute over 90%of the pallet market and are recovered or recycled at

extremely high rates (often cited as around 95%). Imposing EPR costs or reporting obligations on pallet owners or manufacturers would inject administrative complexity and cost into supply chains – particularly in the construction and building materials sectors – without yielding meaningful improvements in recovery.

Existing efficient industry infrastructure. The pallet and container industry maintains robust systems for pallet repair, resale, reuse, and end-of-life recycling (e.g. grinding into mulch, animal bedding, or bioenergy feedstock). These systems are mature, decentralized, and cost-efficient.Because pallets are already well reutilized and recovered, including them under SB 54 would yield little additional diversion. The regulatory burden would largely duplicate existing industry practices, with negligible incremental benefit.

RECOMMENDATION ON REGULATORY TEXT

"Wood pallets (and their associated components) used for transport and stacking of goods are expressly excluded from the definition of 'packaging' for purposes of this regulation. This exclusion applies whether new, reused, repaired, or recycled."While SB 54 does not specifically call for the inclusion of wood pallets in the regulation, if CalRecycle is concerned about the rate of pallet recovery and reuse, the regulation can require monitoring or reporting consistent with SB 54 goals, without full inclusion. Alternatively, CalRecycle could specifically designate pallets as "reusable" materials excluded from the definition of covered materials under Section 18980.2.1.

Response to O-21-3

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for wood pallets. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

Comment O-21-4

SUMMARY OF RECOMMENDATIONS AND BENEFITS

Adopting these exclusions would allow SB 54 to focus on consumer-oriented, disposable packaging streams where EPR can deliver demonstrable environmental value. At the same time, it would preserve economic efficiency and avoid unintended negative impacts on California's construction industry.

NAIMA is ready to assist CalRecycle by providing further industry specific data that may help refine the SB 54 framework. Thank you for your consideration.

Response to O-21-4

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-22: Association of Home Appliance Manufacturers (AHAM) (Jacob Cassady)

Comment O-22-1

The Association of Home Appliance Manufacturers (AHAM) appreciates the opportunity to provide comment on SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations (45-Day Comment Period).

Covered Packaging Material List Must Acknowledge Unavoidable Use of Certain Materials

AHAM supports all material packaging EPR legislation that provides manufacturers of durable goods with the ability to deliver products to consumers in a safe, efficient manner that protects both consumer and product. The final list of “covered packaging materials” or list of packaging materials required to be collected, must consider the unavoidable use of certain materials. Materials, such as expanded polystyrene (EPS) and thin plastic film (PE), are used by packaging engineers to protect the appliance and factory personnel during storage, transport, and delivery. These materials are the safest and most cost-effective because they are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions.

Large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers are stacked as high as 30 feet and packaging cannot fail while products are warehoused, regardless of environmental or climatic conditions. Heavy durable goods have different requirements than smaller fast-moving consumer goods. They must be able to ensure the protection of workers during transportation and at distribution centers.

Worker safety in warehouses, distribution centers or during transportation/delivery must be considered, especially when dealing with large appliances such as refrigerators, freezers, dishwashers, cooking ranges, clothes washers and dryers. Once assembled, major appliances are often packaged, stored and moved in very large warehouses or distribution centers. These facilities often have limited climate control and can experience extreme temperature and humidity changes. Low temperatures can cause packaging materials to become brittle while humidity and heat can affect the packaging’s structural integrity and limit the effectiveness of adhesives or the strength of products made from fiber.

For safety purposes, it is vital to maintain the structural strength of packaging materials, particularly with respect to major appliances that are regularly stacked vertically

with multiple units above ground. Furthermore, these appliances are often moved around by clamp truck and the packaging must withstand the force of the clamps to be moved efficiently. Other paper alternatives such as cardboard, molded pulp or honeycomb can only handle a limited number of impacts and are more apt to lose structural integrity in hot and humid environments.

A fiber-based alternative to EPS would be bulkier and heavier. Consequently, this increased unit size leads to more truck loads need to transport the same number of units, more fuel to move them, and more warehouse space required to store them. It is estimated that there would be an increase in size of 5-10% in all directions for the equivalently designed protective packaging, which equates to an increase of about 20-30% more trucks needed to deliver large appliances.

Additionally, thin plastic film (PE) is used to protect the finish of appliances as well as the display screen. Fiber alternatives, such as paper, are like sandpaper and would scratch the product and would lead to consumers either accepting a damaged product or refusing delivery and the distributor returning the product to the warehouse. There is no alternative to the use of plastic film to protect the finish of appliances or the display screen.

Response to O-22-1

Comment rejected. This comment does not address the proposed regulations themselves but rather discusses packaging materials whose use the commenter alleges is unavoidable. Because no change to the proposed regulations is proposed, no substantive response is required.
To the extent the commenter intended to suggest a change to the regulations concerning the covered material list published by CalRecycle, it fails to do so; it only makes the vague suggestion that such a list "consider the unavoidable use of certain materials." Even if that request were explained, it could not justify any change to the proposed regulations because it misapprehends the function of the list. The list is not a list of "covered packaging materials." Rather, it is a list of categories into which covered materials fall and, for each category, whether the category encompasses covered material that is recyclable or eligible to be labeled "compostable." For plastic categories, the list also includes recycling rates. The list does not concern the practical necessity of using particular covered materials or covered material categories. See Public Resources Code section 42061.

Comment O-22-2

Appliance Packaging May Not Enter Residential Recycling Stream

Materials used to package appliances may ultimately not enter the residential recycling stream. Large appliances are usually delivered to a consumer’s home and, as part of the installation, the packaging material is removed by the installer and not left in the home. The installers load the packaging into the delivery truck and return those materials to be recycled through commercial (non-residential) recycling systems.

Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream. A shipment of portable and floor care appliances would include hundreds of products placed in multiple master cartons that are secured to a pallet. The pallet of product goes to a distribution center and is either separated by units or delivered to the final seller. Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream.

Response to O-22-2

CalRecycle rejects this comment. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. If the commenter intended to suggest that the regulations create a general exemption for materials that do not enter the residential recycling stream, CalRecycle rejects that recommendation. CalRecycle does not have general authority to create exemptions not established by statute. Statute does not contemplate that merely being recycled outside the residential recycling stream could be sufficient to render single-use packaging not subject to the law; PRC section 42041(e)(2)(H) might apply but imposes additional, stringent requirements. Accordingly, the proposed regulations accommodate the commenter's concerns, and no change is necessary.

Comment O-22-3

Packaging Collected Outside Residential/Household Recycling Stream Should Remain Exempt

AHAM appreciates the “covered material exemption” that was included in the Plastic Pollution Prevention & Packaging Producer Responsibility Act. The inclusion of this language, which is similar to Oregon’s EPR law, the Plastic Pollution and Recycling Modernization Act (SB582, 2021), recognizes and encourages this successful recycling process by including a provision that exempts covered packaging materials if the producer can demonstrate that their packaging is recovered as a function of the distribution chain and is recycled at a responsible end market. The Oregon law states the following:

A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:
(A) Is collected through a recycling collection service not provided under the opportunity to recycle;
(B) Does not undergo separation from other materials at a commingled recycling processing facility;
and
(C) Is recycled at a responsible end market1

Ontario, Canada takes a similar approach with a regulation that allows for two deductions and home delivered appliances are one of them. The following is a common deduction in Canada:

Allowable deductions are those Blue Box materials that are:
Collected from an eligible source at the time a related product was installed or delivered. For example, packaging that is supplied with a new appliance and is removed from the household by a technician installing the new appliance.2

Circular Materials, a Canadian not-for-profit producer responsibility organization (PRO) works to develop, implement and support effective and efficient recycling programs across Canada. To help producers meet their obligations, Circular Materials publishes a Guidebook for Stewards, under extended producer responsibility (EPR) regulations in Canada's provinces.3
The 2023 Guidebook notes that there are differences in the definitions of packaging across the provinces and in an attempt to harmonize the programs, Circular Materials has designated packaging to be defined as: *"materials that are used for the containment, protection, handling, delivery or presentation of goods which are supplied to residential consumers (as opposed to industrial, commercial, or institutional consumers)."4*

Circular Material's Guidebook identifies and distinguishes between packaging materials that are supplied to residential consumers and packaging materials that would not enter the residential or household system of packaging recovery.

Response to O-22-3

Comment rejected. The comment expresses satisfaction with language included in the statute. It does not address the proposed regulations. Because it suggests no changes to the proposed regulations and raises no objections related to the rulemaking process, no response is required.

Comment O-22-4

Durable Product Manufacturers Should Have Designated Seat on Packaging Advisory Board

Manufacturers of durable products should have an equal role in the management of the program as other stakeholders. Durable goods have unique packaging needs that other, non-durable manufactured goods do not necessarily require. A designated seat or position would ensure that all stakeholders have a voice in the program.

Recovery programs that place responsibility for recycling and/or disposal of post-consumer packaging with producers must ensure producers' involvement is not limited to merely subsidizing the status quo of inefficient recovery and recycling programs. If producers are responsible for the costs to dispose/recycle in a given jurisdiction, then producers must have the authority to exercise proper oversight without being required to give preferential treatment to existing partners, collectors, or municipal programs during

the program's design and implementation. Requiring responsibility without authority is a dysfunctional management structure.

Response to O-22-4

CalRecycle rejects this comment because CalRecycle does not have the statutory authority to restructure the producer responsibility advisory board by specifically including durable product manufacturers. PRC subsections 42070(a-b), requires that the director of CalRecycle must appoint all 13 voting and 3 nonvoting members in specified categories to the advisory board on or before July 1, 2023. To the extent that the advisory board should adhere to the principles of democratic participation, proportional representation and participatory process, the Department has not placed any limitation on applications to fill vacancies on the advisory board as they become available.

Comment O-22-5

Material Fees Appropriately Assigned Based on Material's Environmental Impact

As CalRecycle and the PRO consider appropriate packaging material fees or "eco fees" they must consider the life-cycle impact of the material. The use of packaging material that is easily and readily recycled should be incentivized as compared to lightweight, non-biodegradable materials. Alternatives to existing packaging materials or material source reduction involve tradeoffs. For example, plastic-based products will generally be lighter and lower volume than fiber-based packaging. In addition, there are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging, especially for home appliances that have non-consumer facing packaging, because the packaging is not used for marketing purposes.

Adequate packaging is purely an additional cost to the product manufacturer to ensure the product arrives at the home without being damaged. The methodology used to set fees should be consistent with established practices to determine fair allocation of costs based on the complexity required to collect certain material. California should require the PRO(s) to apply the minimal annual administration fee feasible to prevent less environmentally impactful materials from subsidizing more environmentally impactful materials.

Response to O-22-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. PRC section 42053(e) already requires a PRO to adjust producer fees using malus fees or credits based on factors that take into account and incentivize the recyclability of covered material, including, for instance, the factors described in PRC sections 42053(e)(3) and (5). Sections 18980.6.7(e) and (f) of the proposed regulations implement the PRO's fee-setting authority by establishing the process and criteria that will guide the PRO's determination of eco-modulated producer fees, including by requiring the PRO to justify its

determination of a base fee rate and any adjustments by addressing, among other factors, data pertaining to the biodegradation or disintegration rates of compostable covered materials in sections 18980.6.7(e)(1)(A) and (f)(1). Therefore, the eco-modulated fees are already designed to incentivize materials that are easily recycled or that are biodegradable under the current statutory and regulatory framework. Additionally, CalRecycle rejects this comment's recommendation that the proposed regulations should require a PRO to apply the minimal annual administration fee feasible to prevent less environmentally impactful materials from subsidizing more environmentally impactful materials. PRC section 42053(d) grants the PRO with the authority and discretion to structure its producer fees based on the factors described in that section. CalRecycle will then have the opportunity to review and determine whether the proposed producer fee schedule satisfies the requirements of PRC section 42053 under section 18980.6.2 of the proposed regulations. CalRecycle has determined this process for review and approval allows it to retain a central role in ensuring that the PRO complies with its requirements under the Act in structuring its producer fee schedule without being overly prescriptive in the proposed regulations. No further change is necessary to the proposed regulations.

Comment O-22-6

Credit Manufacturers for Previous Packaging Reductions

Manufacturers who proactively reduced and/or included recycled material in their packaging should have those actions counted toward any source reduction or recycled material requirement. EPR programs should not penalize companies that have already taken these steps.

Response to O-22-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053, 42057, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(e)(1) requires the PRO to adjust producer fees using malus fees or credits based on the percentage of postconsumer recycled content in the participant producer's covered materials. Section 18980.6.7(f) of the proposed regulations implements this requirement by clarifying the process for the PRO's adjustment of producer fees. This provision is not limited to the prospective inclusion of postconsumer recycled content, and, as such, applies equally to producers that have previously and proactively incorporated postconsumer recycled content in their covered materials prior to the enactment of the Act. Additionally, PRC section 42057(f)(1) already requires a PRO to give producers credit for source reduction achieved from the 2013 calendar year to the 2022 calendar year, and nothing in the proposed regulations is in conflict with this requirement. Therefore, to the extent this comment is concerned with counting producers' proactive source reduction or postconsumer recycled content efforts, the Act and proposed regulations already achieve this purpose and no further changes to the proposed regulations are necessary.

Comment O-22-7

States should seek a Harmonized Approach

To the greatest extent possible, AHAM requests California harmonize its program, including definitions and the process for reporting and remitting, with other state's programs. Harmonization of recycling policies will encourage economies of scale, efficiencies and convenience for consumers, while streamlining compliance. In Canada, EPR packaging programs exist in most Provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents.

Response to O-22-7

CalRecycle rejects this comment. This comment does not suggest any specific changes to the proposed regulations. or raise issues related to the rulemaking process. With regard to harmonization with other states, CalRecycle has, to the extent possible, with the limits of the SB 54 statute, made best efforts to harmonize its regulations with those of other states implementing similar EPR programs.

Comment O-22-8

Covered Material Category Definitions

With respect to covered materials, CalRecycle should provide producers with a definition, examples and reporting tips for each of the covered material categories. The *WeRecycle Material List,5* in the Canadian *Guidebook for Stewards*, provides producers with such information. Harmonization with definitions already existing in Canada will help producers comply with *SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act*.

Additionally, material category definitions for SB 54 should be clearly defined for producers through the rulemaking and not reliant on the material category definitions in *SB 343 Preliminary Findings Report* (reference Appendix 4. SB 343 Material Types and Forms List, Table D1), particularly since the material categories between the two regulations are not aligned. Producers should not have to go back and forth between multiple regulations and attempt to determine what are the applicable or appropriate material categories or definitions.

Response to O-22-8

Comment rejected. The commenter generally requests definitions of each covered material category. The specific parameters of covered material categories are addressed in the covered material categories list that CalRecycle publishes pursuant to Public Resources Code section 42061. That list itself is not part of this formal rulemaking. Also, a regulation is not required for CalRecycle to publish "examples and reporting tips."

The commenter's proposed inclusion of definitions in the proposed regulations themselves is unfeasible, unnecessary, and inconsistent with statute. Defining

covered material categories in regulations themselves would result in categories that could not be changed in a reasonable time frame, and the statute expressly contemplates CalRecycle making changes to the covered material categories without undertaking formal rulemaking (Public Resources Code section 42061(a) through (f)).

Comment O-22-9

Conclusion

AHAM appreciates the opportunity to provide comments on the *SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations (45-Day Comment Period).* Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value
electronics from retail establishments.

Respectfully submitted,
Jacob Cassady
Director, Government Relations
(202) 202.872.5955 x327
jcassady@aham.org

About AHAM

AHAM represents more than 160 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives. The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly $200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than $50 billion.

In California, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to California is $15.9 billion, more than 85,000 direct and indirect jobs, $2.4 billion in state tax revenue and more than $5.3 billion in wages. The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances also are a success story in terms of energy efficiency and environmental protection.

Response to O-22-9

Comment rejected. No response specific to the commenter's submission is necessary. The "conclusion" section summarizes the commenter's recommendations, to which CalRecycle has responded separately, and the "About AHAM" section does not concern the proposed regulations.

O-23: Asphalt Roofing Manufacturers Association (ARMA) (Miriam Higginbotham)

Comment O-23-1

The Asphalt Roofing Manufacturers Association (ARMA) welcomes the opportunity to submit, on behalf of its members, comments regarding CalRecycle's proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. ARMA is a trade association representing North America's asphalt roofing manufacturing companies and their raw material suppliers. Our members account for approximately 90% of North American production of asphalt shingles and asphalt low-slope roof membrane systems. Additional information about ARMA's mission and activities can be found on its website, https://asphaltroofing.org/about-arma/about-us/.

Given the primary focus of the SB 54 regulations on consumer products, ARMA urges CalRecycle to determine that construction & demolition (C&D) waste and packaging for business-to-business products are beyond the scope of the regulations, or incorporate exemptions for these materials in the regulations.

There are limited "responsible end markets" available for C&D waste, and yet there is no exemption available for construction materials under the proposed regulations. At a minimum, items like wooden pallets should be exempted from the regulations. As noted in prior ARMA comments submitted on June 3, our members use wooden pallets as a key component of transportation and construction packaging for asphalt roofing products. Data from the National Wooden Pallet & Container Association (NWPCA) shows that wood pallets are reused and repurposed at exceedingly high rates, particularly when compared to the 15% recycling rate for plastics: 95% of pallets are recovered into usable materials. Pallets comprise only 1.8% of all wood landfilled by MSW landfills and 5.6% landfilled by C&D landfills. See NWPCA, https://www.palletcentral.com/page/LandfillAvoidance.

Indeed, ARMA's Asphalt Shingle Roofing System Life Cycle Assessment estimates that pallets are reused 20 times in asphalt shingle roofing manufacturing. See ARMA Environmental Product Declaration: Asphalt Shingle Roofing System, Installation: Fastened (2023), https://www.asphaltroofing.org/wp-content/uploads/2024/02/111.2_ARMA-Asphalt-Shingles.pdf.

Given that wooden pallets are already part of a well-established circular system, ARMA urges CalRecycle to clarify that wooden pallets are not a priority packaging material for SB 54 regulation, and provide an exemption for wooden pallets as a covered material under SB 54. Such an exemption would be in keeping with the approach taken by Oregon under its packaging EPR law, the Plastic Pollution and Recycling Modernization Act (SB 582), which provides a specific exemption from the definition of "covered products" for "(r)igid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack, or similar device." Section 2(6)(b)(D). ARMA requests that CalRecycle provide a similar exemption for pallets under SB 54.

We note there is inherent difficulty in trying to reduce packaging for construction materials, as it is essential to ensure adequate protection of products during shipping

and handling. Package durability is critical because of the harsh environments in which they are commonly distributed and installed.

ARMA appreciates CalRecycle's consideration of these comments, and we welcome the opportunity to respond to questions if additional information is needed.

Response to O-23-1

Comment rejected. Regarding the general recommendation that "business-to-business products" be considered outside the scope of the regulations (or, technically, the statute), CalRecycle rejects that recommendation for the reasons provided in response to comment O-38-1. Regarding the alternative request that the proposed regulations "incorporate exemptions" for construction and demolition waste, no change is necessary because the regulations already address exemptions available to any covered material that raises compliance challenges. See section 18980.2.4, addressing the exemptions authorized under Public Resources Code section 42060(a)(3) and (a)(4). It is not prudent for the regulations themselves to codify exemptions for specific types of materials; compliance challenges are not necessarily permanent.
Regarding "construction & demolition (C&D) waste" specifically, the commenter appears not to be identifying any packaging to begin with, so the request for an exemption relevant to it is out of place. The statute concerns "packaging," which by definition is used with commercial goods and is not waste or used with waste.

Regarding application of the statute to wooden pallets, see CalRecycle's response to comment O-40-1.

O-24: Outdoor Power Equipment Institute (Brandon Martin)

Comment O-24-1

Thank you for the opportunity to provide feedback on the pending permanent regulations around California SB 54. This process is critical for producers to understand their obligations and potential impacts on their respective business within the state of California.

Introduction

The Outdoor Power Equipment Institute is an international trade association representing more than 100 manufacturers and their suppliers of both gas- and electric-powered outdoor power equipment. and non-road powered engines, personal transport & utility vehicles, golf cars and consumer and commercial outdoor power equipment ("OPE"). OPE includes lawnmowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. OPEI member companies and their suppliers contribute approximately $16 billion to US GDP each year.

We collectively appreciate the opportunity to provide feedback to CalRecyle. We understand that CalRecycle receives comments from many parties – which could lead to batch review and responses by addressing similar topics. We trust CalRecyle will consider these collective comments to represent the concerns of our full membership organizations who are obligated under the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

Response to O-24-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-24-2

Concerns and Recommendations

(Pg. 89/166) Section 18980.6.1 Producer Responsibility Plan Submission

It would be appropriate for public comments to be visible to the public during the public comment period. Public comments should be made available on the same website and should be allowed to be submitted anonymously. Paragraph (e) demands a summary of all comments; any unedited comments should be made visible during the comment period.

Public comment period should also have a required minimum number of days for review such as 60 days from when it's made available.

Response to O-24-2

CalRecycle partially accepts and partially rejects this comment. To address the commenter's concern over public comments, section 18980.6.1 has been revised to clarify that the plan must be made available to the public and be subject to a 60-day comment period. Regarding availability of comments, CalRecycle rejects that suggestion for the reasons stated in response to comment O-24-3 regarding the same suggestion related to sections 18980.6.3 and 189807.2.

Comment O-24-3

(Pg. 91/166) Section 18980.6.3 Review of Updated Producer Responsibility Plan

It would be appropriate for public comments to be visible to the public during the public comment period. Public comment period should be the same as the Advisory Board review period of 60 days.

Additionally, allowing for 120 calendar days after receiving comments from the advisory board leaves the possibility that there will be a period without an approved Plan. Paragraph (a) of this section requires submission 180 days before the expiration date of the Plan, then paragraph (b) of the section allows for 60 calendar days until the advisory board provides a response. The regulation should not allow for any period during which the PRO does not have an approved Program Plan.

This is repeated on Pg. 105/166 Section 18980.7.2. *Review of Updated Independent Producer Plan.*

Response to O-24-3

CalRecycle partially accepts and partially rejects this comment. To address the commenter's concern over public comments, sections 18980.6.3(b) and 18980.7.2(b) have been revised to clarify that the proposed updated plan must be made available to the public and be subject to a 60-day comment period. Regarding the potential for there to be a period without an approved plan, CalRecycle rejects this comment. The timeline established in PRC section 42051.2(d)(2) and further specified in sections 18980.6.3(a) through (c) of the proposed regulations ensures that there will always be a plan in effect. In the event that a plan update is not approved according to the timeline set forth in those sections, PRC section 42051.2(d)(2) authorizes CalRecycle to extend a previously approved plan until the updated plan is approved or rejected. Therefore, no further change to the proposed regulations is necessary to ensure that an approved plan is always in effect. This applies equally to updated plans for Independent Producers under section 18980.7.2 of the proposed regulations.

Regarding the suggestion that public comments be made "visible to the public during the public comment period," CalRecycle rejects that suggestion because the administrative burden on the PRO to do so would outweigh the benefits, which the commenter does not describe. No further specifications, including visibility and anonymity of comments, are necessary to give effect to the statutory provisions concerning public comments. Moreover, the public comments will ultimately be summarized in all producer responsibility plans.

Comment O-24-4

(Pg. 96/166) Section 18980.6.7. Eco-Modulated Fee and Fee Schedule

The methodology to determine the fee to each producer should be outlined within this section. It should reference paragraph (1) of subdivision (c) of section 42053 "Individual assessments imposed on a producer due to unique characteristics of their covered material, as described in subdivision (d)." The rule currently outlines the costs will be covered by the fees. However, the method of allocating those costs among the producers in the PRO is left undefined and therefore up to the PRO's discretion for up to 2 years after the Program Plan has already been approved. This ambiguity will not work for producers and should be clarified in the rulemaking.

Additionally, the method of allocating costs should not vary drastically compared to the final methodology outlined to start in Year 3. Therefore, basing the fee-setting methodology on the "unique characteristics of their covered material" as stated in paragraph (1) of subdivision (c) of section 42053 is appropriate.

If the fee-setting methodology is substantively different than the methodology outlined by Paragraph (e) of this section to start in Year 3, the change in fees due to those differences should be accounted for by the PRO. This can easily be accomplished by including (in the Year 3 budget) the costs covered by the interim fees, then applying the interim fees as a credit. That way, any producers who were "overcharged" during the interim period would have a lower bill in Year 3, and any producers who were "undercharged" during the interim period would pay the balance in Year 3. This allows for any discrepancies to be fairly accounted for and level set for producers. The regulations for Maine's EPR bill uses this approach (096 Chapter 428 Paragraph 8 Subsection C).

Response to O-24-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC sections 42053(a) through (c) authorize a PRO to exercise its discretion in establishing a producer fee schedule that is sufficient to ensure the requirements of this chapter are met by the PRO and the plan is fully implemented. As set forth in PRC section 42053, and as further clarified in sections 18980.6.7(a) through (c) of the proposed regulations, the appropriate factors for the producer fee schedule and the PRO's methodology will necessarily evolve in the early years as more producer data becomes available. See the responses to comments B-6-6 and B-13-12. Moreover, because the PRO is given the responsibility and discretion to develop and establish a producer fee schedule under PRC section 42053, section 18980.6.7(e)(1)(A) appropriately allows the PRO to exercise its discretion in establishing a methodology to determine base fee rates pursuant to PRC section 42053(c)(1). Section 18980.6.7(e)(1)(A) requires the PRO to provide CalRecycle with a justification of each rate or of the methodology used to derive rates. Section 19880.6.7(e)(1)(A) therefore strikes an appropriate balance between recognizing the discretion that is afforded to the PRO by PRC section 42053 to develop and establish a producer fee schedule while providing CalRecycle with sufficient information and opportunity to oversee the methodologies involved in the development of the producer fee schedule. No further change is necessary to ensure the fair allocation of producer fees and effective oversight by CalRecycle. Finally, to the extent this comment makes the alternative recommendation to apply a credit for interim fees in year 3, CalRecycle rejects this comment for the reasons provided in response to comment B-36-6.

Comment O-24-5

(Pg. 101/166) Section 18980.6.8 Recordkeeping and Reporting Requirements

Items (C) and (D) are listed as if they are supposed to be disaggregated by each producer. However, most producers will have no way to determine what the total weight of their material is disposed of or recycled. Instead, this data should be documented in an aggregated manner unless special studies are performed for eco-modulation purposes.

Response to O-24-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1, 42052, and 42060 of the Public Resources Code, and the recommended changes are not necessary to the implementation or enforcement of the Act. Section 42052(a)(4) requires a PRO or Independent Producer to annually submit any information deemed necessary to collect and report data pursuant to section 42060(a), and section 42064(d) requires a producer or PRO to maintain records of covered materials offered for sale, sold, distributed, or imported in or into the state in a form and manner established by CalRecycle that CalRecycle determines is necessary to determine if a producer is in compliance with the Act during an audit. Consistent with those statutory requirements, CalRecycle has determined that the information concerning the total weight of material disposed and total weight recycled is necessary to enforce the Act and to ensure that its requirements, including the requirements established in section 42050 and the policy goal established in section 41780.01, are met. Additionally, this requirement is not overly burdensome and will not result in unnecessary administrative costs, because the data reported pursuant to section 18980.6.8(a)(1)(D) will closely relate to each other.

Comment O-24-6

California Public Resources Code 42061.5. (a)(1)

This requirement is not covered in the draft regulation. As a result, the current board for CAA California does not represent diversity in sources of covered materials and certainly does not represent diversity in producer/entity size. It would be appropriate for CalRecycle to more precisely describe the board and how voting members are chosen.

Response to O-24-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060 and 42061.5, and no change is necessary to the implementation of the Act. There is adequate clarity in statute concerning the issue identified by the commenter, and the comment does not suggest any change to the text included in the proposed regulations.

Comment O-24-7

In Closing

We hope these comments, concerns, and suggestions are helpful and we collectively urge CalRecyle to consider our comments and make appropriate amendments.

Thank you again for this opportunity to respond as we collectively welcome the opportunity to discuss further.

Response to O-24-7

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-25: National Lubricant Container Recycling Coalition (Tristan Steichen)

Comment O-25-1

RE: Comments on SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations.

The National Lubricant Container Recycling Coalition (NLCRC) was established to encourage collaboration and develop circularity solutions for lubricant packaging in the United States. To ensure a comprehensive perspective from the industry, the NLCRC's membership includes stakeholders from across the lubricant packaging value chain, including producers, packaging manufacturers, retailers, recyclers, haulers, and other interested parties together, in an equal partnership to accelerate the achievement of packaging recycling solutions. Lubricant container packaging is hard to recycle due to the challenges created by residual liquid products left in the container. The NLCRC believes in EPR that promotes results-based, efficient, equitable, and transparent practices and encourages the establishment of fit-for-purpose collection methods for complex materials.

The lubricant industry is regulated by several post-consumer waste programs in California, including packaging EPR (SB 54), the Used Oil Recycling Program (SB 546), and potentially HHW EPR under proposed bill SB 501. Impacted producers are (or will be) required to manage these programs independently, leading to challenges in efficiency, effectiveness (performance), and cost to both consumers and producers. Recognizing the need to develop a solution, the NLCRC is sponsoring AB 1325, a producer-led EPR bill that comprehensively addresses lubricant products and packaging into one program. The mechanism requires transitioning the existing Used Oil Recycling Program into a new EPR law and adding packaging and other lubricant industry products to the list of covered materials.

Despite the NLCRC's intent to develop independent EPR legislation, we are providing comments to the proposed amendments to SB 54 that we believe to be beneficial to the Department, consumers, and any producer of hard-to-recycle packaging. Most of our comments seek to amend draft language to clarify "Individual Producers" and "Alternative Collection Programs."

On behalf of the NLCRC, I appreciate your review of these comments.

Response to O-25-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-25-2

Section 18980.1 Definitions (a)(10)

"Independent Producer" means a producer that is approved by the Department to comply with the requirements of this chapter without being a participant producer. [Cal. Code Regs., tit. 14, div. 7, ch. 11.1, § 18980.1(a)(10) (2025)]

NLCRC Comment: The definition should be amended to say, "Independent Producer means a producer that is approved by the Department to comply with the requirements of this chapter without being a participant producer, **pursuant to section 42051(b)(2)(A) of the Public Resources Code**. The NLCRC asks for this clarification to allow for a group of producers with the same or similar products/packaging to work collaboratively to support collection programs that enhance packaging collection and recycling in CA. Further, enabling a group of producers to develop an 'Independent Producer Plan' in California would support EPR harmonization efforts in the U.S., while enhancing the amount of packaging material collected and managed by producers in California.
In addition to the suggested amendment to the definition of 'Independent Producer', NLCRC is seeking clarity from CalRecycle that the definition and use of the term 'Independent Producer' throughout the proposed rule is a new term and separate from the statute provision that enables a producer to comply 'Individually', thus creating a compliance pathway for a producer or group of producers to create an independent collection program that is both administratively and operationally independent of the PRO.

Response to O-25-2

CalRecycle rejects this comment for the reasons stated in response to comment O-81-5.

Comment O-25-3

Section 18980.5.1. Application for Independent Producer Compliance

(a) A producer seeking to comply with the Act without participating in a PRO shall first, if not already registered with the Department pursuant to subdivision (a) of section

18980.5, register with the Department pursuant to subdivision (a) of section 18980.10 and submit ~~an application for individual compliance~~ **an application for independent producer compliance** to the Department.

Response to O-25-3

CalRecycle rejects this comment as the commenter's suggestion would have no substantive effect on the regulations, and further, the reasoning behind this specific recommendation is without a clear explanation as to why it is necessary. Moreover, section 1890.5.1 is even titled "Application for Independent Producer Compliance", making the suggested change in the comment duplicative and unnecessary.

O-26: Resource Recovery Coalition of California (Veronica Pardo)

Comment O-26-1

The Resource Recovery Coalition of California (RRCC) appreciates the opportunity to submit comments on the permanent regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act, as transmitted to the Office of Administrative Law (OAL) on August 12, 2025. RRCC is a statewide trade association representing haulers, recyclers, and composters that provide essential waste and recycling services across California. Our members play a critical role in ensuring the successful implementation of SB 54 and in advancing the state's broader waste diversion and climate objectives.

We recognize that the success of SB 54 depends on timely action to meet the statutory deadlines. Accordingly, our recommendations are focused and essential, while intentionally limited in scope to avoid prompting further rounds of comment. Our proposed language changes align with statutory expectations by ensuring SB 54 does not disrupt existing franchise agreements, preserves local jurisdiction authority over collection services, and requires the Producer Responsibility Organization (PRO) to operate within the current solid waste handling frameworks.

With these principles in mind, we recommend that CalRecycle strike the reference to "discarded" from the definition of "alternative collection." Doing so is consistent with the Department's own Initial Statement of Reasons (ISOR). As the ISOR explains, the purpose of this subsection is to define "alternative collection" in contrast to the broader definition of "curbside collection" under the Act, and to ensure that no program conducted by or on behalf of local jurisdictions can be considered "alternative collection." The ISOR further clarifies that whether a program qualifies as "alternative collection" cannot depend on whether the material has been "discarded" or is "solid waste," because those concepts are not relevant to whether non-curbside programs successfully recover covered material or whether such recovery constitutes recycling under PRC section 42041(aa)(1). Considering this explanation, the inclusion of "discarded" in the regulatory text is unnecessary and inconsistent with the Department's stated rationale.

In addition to aligning with the ISOR, removal of “discarded” is also critical to protecting the integrity of California’s existing waste and recycling systems. Most cities and counties rely on exclusive franchise agreements that reserve to their authorized service providers the sole right to collect and process discarded solid waste, including recyclables. For more than 30 years, California courts have recognized “discarded” as the defining element of solid waste under the *Waste Management of the Desert* decision, distinguishing discarded recyclables (which may only be managed by the franchised hauler) from undiscarded recyclables that a generator may freely donate or sell. This distinction has been the financial and legal foundation for every franchise agreement, materials recovery facility, and capital investment in local recycling infrastructure. Introducing the word “discarded” into the definition of “alternative collection” undermines this settled framework, risks conflict with franchise agreements and could destabilize long-standing financing arrangements that depend on reliable material flows.

For these reasons, inclusion of “discarded” creates unnecessary conflict and confusion. Its removal will ensure the regulations remain consistent with statutory intent, the ISOR, and established solid waste law.

We therefore propose the following revision: *“Alternative collection” means a program that collects covered materials, regardless of the manner and location of collection, and is not “curbside collection,” as defined in subdivision (g) of section 42041 of the Public Resources Code.*

While programs operated by or on behalf of a local jurisdiction may not be considered “alternative collection,” nothing in this definition should be construed to prohibit franchised solid waste enterprises from conducting alternative collection programs outside the scope of their municipal contracts, provided such programs comply with applicable law and do not conflict with existing franchise agreements.

In closing, we respectfully urge CalRecycle to adopt this revision to provide clarity, protect the stability of existing waste and recycling systems, and ensure consistency with the statutory framework of SB 54. RRCC remains a committed partner in the success of this program and appreciates the opportunity to provide these comments.

Response to O-26-1

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2, B-42-1, and O-47-2.

O-27: Quaker Earthcare Witness (Keith Runyan)

Comment O-27-1

Dear CalRecycle Staff,

Quaker Earthcare Witness (QEW), the environmental network of the Religious Society of Friends (Quakers) in North America, submits this comment in strong support of implementing robust, comprehensive regulations under SB 54 that fulfill the intent of the law to reduce plastic production, eliminate harmful waste streams, and hold producers accountable for the full lifecycle of their packaging.

We are deeply concerned that the current proposed regulations include exemptions for food and agricultural products and appear to weaken restrictions on so-called "chemical recycling." These provisions risk undermining the core purpose of SB 54—to dramatically reduce single-use plastics, promote genuine recycling and composting, and prevent environmental harm, particularly in communities already burdened by pollution.

We urge CalRecycle to:

Remove broad product exemptions that allow continued high volumes of single-use plastic.

Maintain strict limits on "chemical recycling" and prioritize true reuse, reduction, and mechanical recycling.

Ensure transparent reporting, producer accountability, and meaningful public participation in oversight.

As a faith-based environmental organization, we believe in right relationship with the Earth and all its inhabitants. The promise of SB 54 was to lead the nation toward a more sustainable, just, and circular economy. We encourage CalRecycle to honor that vision by adopting stronger regulations consistent with both the letter and the spirit of the law.

In Friendship,

Keith Runyan
General Secretary
Quaker Earthcare Witness

Response to O-27-1

Comment partially accepted and partially rejected. Regarding the request that CalRecycle "[r]emove broad exemptions," CalRecycle interprets the comment to refer to the exclusion described in section 18980.2(a)(2) because that is the only "exemption" the commenter specifically mentions. CalRecycle rejects that suggestion to the extent it requests that section 18980.2(a)(2) be removed because removing it would contravene Public Resources Code section 42060(b), which requires consideration of conflicts with federal law. CalRecycle accepts the suggestion, however, to the extent it was intended to allege that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be

applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Regarding chemical recycling, CalRecycle rejects the commenter's proposal because it is vague; it does not explain what would constitute "strict limits" or how the restrictions already in section 18980.4.1(d) are inadequate, nor does it offer any alternative limitations for CalRecycle to consider. See, also, CalRecycle's responses to comments I-6-1 and O-62-1 regarding the adequacy of 18980.4.1(d). Regarding reporting, accountability, and meaningful public participation, no particular response is possible because the commenter only offers a vague, general statement concerning basic regulatory goals, with no explanation of how the proposed regulations fail to fulfill them and no suggested changes for CalRecycle to consider.

O-28: Upstream (Sydney Harris)

Comment O-28-1

Subject: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act - Formal Proposed Regulations

Dear Director Heller and SB54 team,

Thank you for the opportunity to submit comments once again on behalf of Upstream on the updated formal proposed regulations for SB 54. Upstream is an environmental non-profit and leading change agency for the reuse movement in the US and Canada. We spark innovative solutions to waste and forge strategic alliances to help people, businesses and communities shift from single-use to reuse.

We appreciate CalRecycle's continued efforts to craft rules for this program with public input. At this time, we have only one brief comment on the formal rules, pertaining to **Section 18980.2.1. - Exclusion of Reusable and Refillable Packaging and Food Service Ware.**

Since the informal comment period in June, we have come to realize that this section, specifically **provision (a)(4), may inadvertently exclude the ability for producers to collect reusable packaging via curbside collection programs.** Curbside collection is the gold standard in convenient packaging return, and Upstream continuously recommends to Circular Action Alliance (CAA) and others that the best way to scale reuse into the Consumer Packaged Goods (CPG) sector is to leverage existing recycling infrastructure and systems for convenient returns. This especially includes curbside recycling collection programs, as well as depots throughout the state.

In California, several municipalities are currently exploring curbside reuse collection programs, such as Berkeley, in partnership with Cyclei. Upstream has also heard from other municipalities across the state that are interested in or exploring this concept. These programs are ripe for partnership with CAA, so it is crucial that the rules make it clear this would meet the convenience standards for reuse programs in the law. We have heard from 1 several key players in the CPG space with concerns that curbside collection would not meet these standards and urge CalRecycle to update the regulations to ease those concerns.

Upstream suggests adding the following clause to (a)(4) to clarify this provision:

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

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

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

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

(C) In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied.

Thank you very much for your consideration; please do not hesitate to contact me with any questions at sydney@upstreamsolutions.org.

Response to O-28-1

CalRecycle rejects the commenter's suggestion for the reasons provided in response to comment O-84-3, which makes a substantially identical suggestion.

O-29: California Waste Haulers Council (Mel Gutierrez)

Comment O-29-1

The California Waste Haulers Council (CWHC) offers the following comments in response to the Notice of Proposed Action (Notice) published by the Office of Administrative Law (OAL) on August 22, 2025 to commence the formal rulemaking process concerning the regulations described above.

Comment 1. The current definition of the term "Alternative Collection" appearing in Article 1 requires amendment. In its current form, it would authorize the collection of covered materials, including *discarded* materials, at curbside. The problem is best summarized as follows:

A majority of local agencies in California rely on exclusive franchises for the provision of waste recycling services. Virtually every exclusive franchise agreement in the state, and the ordinance schemes underpinning those agreements, reserves to the waste recycler authorized by the local agency the sole right to collect and to process recyclable solid waste.

For more than 30 years, pursuant to the bright-line financial test established by the California Supreme Court in its landmark 1994 *Waste Management of the Desert* decision, solid waste has been defined to mean materials that are "discarded," a term which the court explained refers to materials handled in exchange for a fee paid by the generator.

Thus, in communities that have adopted an exclusive system for managing solid waste, including recyclable solid waste, only the solid waste enterprise authorized by the local agency may lawfully collect or process recyclables in exchange for a fee imposed on the generator. Generators retain the right to freely donate or sell their *undiscarded*, source-separated recyclables, even in an exclusive franchise environment.

A majority of cities and counties in California utilize these franchise agreements, and every waste collection program and materials recovery facility (MRF) in existence was financed in reliance on this distinction between discarded materials (waste and recyclable solid waste) and undiscarded recyclables. All require a reliable and sustained flow of material to ensure their loans will be timely and fully repaid.

Any change to these rules would \wreak havoc on existing programs and infrastructure and would, we submit, directly conflict with the provisions of SB 54 itself, including Public Resources Code Section 42051.1.

There are several ways to remedy this problem. At a minimum, Section 18980.l(a)(2) should be revised to read as follows:

"(2) "Alternative collection" means a program that collects covered materials~~, regardless of whether the covered material is discarded or considered solid waste and regardless~~

~~of the manner and location of collection,~~ and that is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code~~, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction~~."

A more comprehensive solution would be to revise Section 18980.1 (a)(2) to read as follows:

"(2) "Alternative collection" means a program that collects covered materials~~, regardless of whether the covered material is discarded or considered solid 'Waste and regardless of the manner and location of collection,~~ and that is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code~~, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction~~, subject to all to all of the following:

(A) Alternative collection shall be implemented in a manner that does not conflict with, disrupt, or adversely affect local solid waste handling requirements and the intent described in Section 40004.

(B) Alternative collection shall be implemented in compliance with applicable law and a manner that does not violate or conflict with existing franchise agreements or the local ordinances supporting those agreements.

(C) Solid Waste. including covered materials that have been discarded. is not eligible inclusion in an alternative collection program. As used herein. materials are discarded if they are commingled with solid waste. or if a fee. charge. or other consideration. in any form or amount. is paid by the generator in exchange for the service."

We urge approval of the second option, elements of which (subdivisions (A) and (B)) were drawn from Public Resources Code Section 42051.1 (c)(3)(A) and (B). Subdivision (C) is a general reference to the standard set forth in the Supreme Court case mentioned earlier, defining the permissible limits of municipal regulation of recycling activities. It is unclear what prompted the prior amendment to the draft Alternative Collection definition, but given the attention that change has brought to this issue, the more prudent course may be to clarify more fully what an Alternative Collection service provider may lawfully do, perhaps forestalling future conflict.

Response to O-29-1

CalRecycle rejects this comment for the reasons provided in response to comments B-18-1, B-17-1, B-17-2, B-40-2, B-42-1, and O-47-2.

Comment O-29-2

Comment 2. Acknowledging the helpful change that was made to Section 18980.11 (b), we remain concerned that the regulations do not make clear enough whether a recycling service provider will be exposed to administrative civil penalties for the lack of a viable responsible end market. That is a different thing than merely stating, as Article

11 now does, that providers are not "required to establish the availability of a responsible end market." Some mention of this issue belongs, we believe, in Article 13 itself.

We therefore urge adoption of the following amendment to Section 18980. 13(j):

"The number of violations of section 42060.5 of the Public Resources Code by a recycling service provider and the accrual of penalties shall be calculated in the same manner as would apply under subdivision (i) for local jurisdictions committing the same violations. No penalty may be imposed against a recycling service provider (1) during the pendency of a request for an extension for, or exemption from, a requirement of subdivision (a) of section 42060.5 asserting that compliance with the requirement is not practicable for a specific identified covered material, or (2) for the lack of a viable responsible end market for covered materials that have been included in its collection and recycling programs. Evidence reasonably supporting the absence of a viable responsible end market shall be submitted by the recycling service provider to the Department for determination."

This amendment is derivative of what the CWHC had earlier proposed but has been scaled back given the change to Article 11. We have also added clarity to reflect that it is the department that will make the final determination.

Response to O-29-2

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, and no change is necessary to the implementation or enforcement of the Act. PRC section 42060.5(a) provides that all recycling service providers must include in their collection and recycling programs all applicable covered material. PRC section 42060.5(b) establishes an exception to this requirement in specified circumstances. Section 18980.11(b) of the proposed regulations implements PRC section 42060.5(a) by specifying when covered material is considered included in a recycling service provider's collection and recycling program. Section 18980.11(b) explicitly provides that PRC section 42060.5(a) does not require a recycling service provider to establish the availability of a responsible end market, and it further provides that the absence of responsible end markets will be deemed to satisfy the criteria for PRC section 42060.5(b). Therefore, the proposed regulations are sufficiently clear and already provide that a recycling service provider will not be subject to administrative civil penalties for the lack of a viable responsible end market. No further change is necessary.

O-30: Coalition for Protein Packaging (Erin Hass)

Comment O-30-1

On behalf of the Coalition for Protein Packaging (CPP), we appreciate the opportunity to provide comments on the August 22, 2025 regulations implementing SB 54, the Plastic

Pollution Prevention and Packaging Producer Responsibility Act. CPP represents producers, distributors, and supply chain partners committed to ensuring safe, sustainable, and affordable protein products for California consumers.
We are writing to express our support for the categorical exclusions provided in Section 18980.2(a)(2) of the draft regulations, which recognize packaging for food subject to regulations, rules, or guidelines for food issued by the FDA and USDA as outside the scope of covered material where no feasible alternative exists.
Support for USDA/FDA Exclusions
• Food Safety and Public Health: FDA and USDA issued regulations, rules and guidelines are not optional and optimized packaging is critical to preventing microbial contamination, maintaining freshness, and ensuring consumer health. Aligning SB 54 with these standards avoids conflicts between federal and state regulations while ensuring Californians have safe access to protein products.
• Food Security: Protein is an essential nutritional component for California families. The regulatory exclusions help safeguard supply chains and prevent disruptions that could compromise affordability and accessibility of these products.
• Regulatory Certainty: By recognizing federal mandates, CalRecycle provides necessary clarity for producers who must comply with both federal and state law. This reduces compliance risk and allows members to focus on reducing unnecessary packaging elsewhere in their operations.
Conclusion
CPP strongly supports CalRecycle's recognition of the unique role of food packaging in maintaining compliance with FDA and USDA regulations, rules, or guidelines in protecting food safety and security. We urge the Department to preserve these categorical exclusions in the final regulations. This approach strikes the right balance between advancing the goals of SB 54 and maintaining California's commitment to public health and nutrition.
Thank you for your consideration of these comments. We look forward to continuing our engagement with CalRecycle throughout the implementation of SB 54.
Respectfully submitted,
Coalition for Protein Packaging (CPP)

Response to O-30-1

This comment must be rejected, and no response is required, because it does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-31: Surfrider Foundation (Jennifer Savage)

Comment O-31-1

On behalf of the Surfrider Foundation's extensive chapter and student club network, comprising thousands of business owners, volunteers and other ocean-loving coastal recreation enthusiasts, we write to express our strong support for robust and effective implementation of the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act. We urge CalRecycle to ensure that responsibility for plastic reduction

and end-of-life management falls squarely on producers and manufacturers—not on consumers.

As outlined in the proposed regulations, the Extended Producer Responsibility (EPR) program must prioritize source reduction of plastic packaging, phase out materials that are not truly recyclable or compostable, and significantly increase recycling and composting rates. To achieve these outcomes, producers should be required to use packaging certified by third parties to meet technical compostability and recyclability standards, as mandated under AB 1201. Clear, enforceable labeling requirements—such as those established in SB 343—are also critical for ensuring transparency and preventing misleading product marketing.

In California, we see firsthand the consequences of single-use plastics on our coastlines. This year alone, our beach cleanup volunteers have collected 23,714 plastic food wrappers, 2,149 plastic food containers, 6,118 plastic lids, 8,458 plastic straws, and 66,783 cigarette butts, along with thousands of other discarded plastic items. These numbers represent only a fraction of what washes onto our beaches and into the ocean, underscoring the urgent need for upstream solutions and producer accountability.

We have two areas of particular concern within the draft regulations:

Response to O-31-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-31-2

• Chemical, advanced recycling, and related technologies: The current language opens the door for the use of costly and potentially harmful technologies that misrepresent their ability to recycle plastic waste. To preserve the integrity of SB 54, we strongly recommend a categorical prohibition on chemical and advanced recycling, as well as related processes.

Response to O-31-2

CalRecycle rejects this comment's suggestion that chemical recycling, advanced recycling, and related technologies be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology.

Comment O-31-3

• Categorical exclusions: The categorical exclusions added in the May 2025 draft regulations—and maintained in the August version—risk undermining the core intent of SB 54. By shifting costs onto other producers, local governments, and ratepayers, these provisions create a loophole that threatens the fairness and effectiveness of the extended producer responsibility framework. We recommend that this section be deleted, and producers facing unique challenges should go through the exemption process.

Response to O-31-3

Comment partially rejected and partially accepted. The commenter does not identify which section this comment concerns, but CalRecycle interprets it to refer to section 18980.2 because it refers to "categorical exclusions." The only basis for the commenter's recommendation is that the exclusions "shift[] costs onto other producers, local governments, and ratepayers." However, far from being a "loophole" created by the proposed regulations, section 18980.2 implements specific provisions in the statute that place certain packaging outside the definition of "covered material." Packaging that is not "covered material" in the first place does not have a "producer" and is necessarily outside the scope of all statutory requirements placed on covered material. Regarding the specific request that the "exemption process" for "unique challenges" should apply, CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2. To the extent this request concerns packaging excluded from the Act under Public Resources Code section 42041(e)(2), CalRecycle rejects it because the packaging at issue is not "covered material," so Public Resources Code section 42060(a)(3) and (a)(4) cannot apply to it. Regarding the appropriateness of excluding certain food and agricultural packaging under section 18980.2(a)(2) of the proposed regulations generally, see CalRecycle's response to comment I-19-1.

CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-31-4

California has long led the nation in advancing environmental protections, and SB 54 represents a critical opportunity to accelerate the transition to a circular economy. Success will depend on shifting responsibility away from individuals—who are left with

limited recycling options—and onto the companies that design, produce, and profit from single-use packaging and foodware. This shift not only protects the environment and wildlife, but also creates a more equitable and effective system for managing materials at the end of their life cycle.

We strongly urge CalRecycle to adopt regulations that fully reflect the intent of SB 54: holding producers accountable, reducing reliance on single-use plastics, and prioritizing materials that are genuinely compostable or recyclable. The California Surfrider Foundation chapter and student club network remain committed to supporting California's leadership in reducing plastic pollution and protecting our ocean, waves, and beaches.

Response to O-31-4

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately,

O-32: City and County of San Francisco, Environment Department (Hilary Near)

Comment O-32-1

Dear CalRecycle,

City and County of San Francisco serves its over 870,000 residents and 14,000 businesses with vision for a safe, vibrant and inclusive City of shared prosperity. This letter is in response to the formal permanent of the SB 54 regulations released by CalRecycle on August 22, 2025.

We appreciate CalRecycle's work to provide a robust set of regulations so that SB 54 can achieve its potential to accelerate a shift to a more circular economy for California. We strongly support the intentions of the law to slow the flow of materials entering our communities, keeping materials in circulation through reuse and refill, and by creating packaging that is designed for recycling or composting at end of life. We also strongly support the extended producer responsibility (EPR) intent of the law – to shift the responsibility for the costs of collecting and processing covered materials to responsible end markets from jurisdictions and ratepayers to the producers of the materials themselves

The comments offered below are informed by our experience implementing and evaluating zero waste programs and policies at our local level. The City and County of San Francisco supports the detailed comments submitted by the National Stewardship Action Council (NSAC) as well as Californians Against Waste (CAW), and the comments below reiterate key feedback in four topic areas: payments to local jurisdictions, reuse and refill, categorical exemptions and end market enforcement requirements. Suggested language to remove is reflected with ~~strikethrough~~ whereas additional suggested language is *underlined and italicized.*

Response to O-32-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-32-2

Topic #1 – Payments to local jurisdictions

The intent of SB54 Plastic Pollution Prevention and Packaging Producer Responsibility Act is to shift the burden of plastic pollution to producers. The current draft rules do not provide enough
guidance to ensure that the financial burden of meeting the requirements of the Act will be placed on producers.

Comment 1a: Reimbursement eligibility 18980.8(g)

However, we still need greater clarity on eligible covered costs. For example, the statutory requirements of SB 54 that the PRO is required to meet cannot be met without the use of existing infrastructure established by local jurisdictions and local recycling service providers. For example, transportation of covered materials will involve using trucks that are currently operating but were purchased prior to January 1, 2023. Transportation is explicitly called out as a cost that is required to be covered under SB 54 (Sections 42051.1(j) and 42060(a)(1) of the Public Resources Code), and therefore reimbursement for these costs will be necessary. Therefore, SFE recommends that amortized capital costs from investments in waste management infrastructure made prior to January 1, 2023, are required to be reimbursed in Section 18980.8(g) of the proposed regulations.

The requirement in Section 18980.8(g)(2)(A) that only the increase in costs resulting from SB 54 is reimbursable should be deleted, since the goals outlined in SB 54 that producers are required to meet cannot be met without the work that local jurisdictions are already doing; this applies to ongoing outreach and education efforts and collection costs related to covered material, as well as capital costs related to covered material.

Response to O-32-2

Comment rejected. The commenter asserts that certain costs incurred before January 1, 2023, are among the costs to be funded by the PRO. For the following reasons, no change is appropriate in response to this comment. To the extent the commenter recommends that costs incurred before passage of SB 54 be reimbursed, that contravenes the plain text of the statute and the Legislature's intent. It is not possible for costs incurred before passage of SB 54 to have been made for the purpose of complying with it. As the following provisions make

clear, the statute only concerns those costs, not earlier ones:

• PRC section 42040(b)(2)(B): "It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations."

• PRC section 42051(b)(2)(B)(ii): "[Independent Producers are responsible for] [f]ully cover[ing] the costs associated with implementing this chapter to the same extent as any other producer participating in a PRO based on the producer's share of covered material."

• PRC section 42051.1(g)(1): "The plan shall include a process for determining and paying the costs that will be incurred by local jurisdictions . . . and others under this chapter."

• PRC section 42051.1(j)(1)(B): "[The plan must fund] [c]osts associated with this chapter incurred by local jurisdictions."

These statutory provisions, in particular the Legislature's statement in section 42040(b)(2)(B) that SB 54 was intended to make local jurisdictions whole for "new costs," consistently relate only to costs incurred for purposes of SB 54. Those purposes did not exist before the law's enactment, so no costs incurred before then could possibly be relevant. CalRecycle therefore rejects this suggestion.

To the extent the commenter asserts that the Act supports the contention that the PRO must cover all costs associated with SB 54, regardless of whether the costs are increased due to SB 54 requirements, that assertion is incorrect. Paragraph (1) of subdivision (d) of section 42053 actually requires the opposite conclusion. That paragraph states one factor the PRO must consider when exercising its discretion with respect to its fee schedule: "[t]he costs to ensure each covered material category meets the requirements of this chapter." But subparagraphs (A) through (E) do not state costs that the fees must be sufficient to cover in their entirety. To the contrary, paragraph (1) states that the costs to be considered "may include all of the following," including the costs identified in subparagraph (C): "[c]osts incurred by local jurisdictions ... to process and transport covered materials ... ." By providing those costs as a categorical example of those that the PRO may consider, as opposed to identifying them as mandatory costs that the PRO must (or "shall") cover, this statutory text makes clear that the Legislature did not intend for funding by the PRO to cover the entirety of local jurisdictions' and recycling service providers' costs associated with SB 54. In effect, the Legislature only authorized, but did not require, the PRO to base its fee schedule to some degree on those costs.

Comment O-32-3

Comment 1b: Administrative costs

In addition, reimbursement eligibility should specify the inclusion of both direct and indirect costs, which would include the administrative costs of compliance with the Act. The administrative burden for such a complex set of rules will require local jurisdictions to either expand staffing or hire consultants and it should be clear that administration is a reimbursable item.

Article 8, Section 18980.8, subdivision (g):
(2) The following costs are reimbursable:
(B) ~~A~~ Direct and indirect costs, including the cost of administration, ~~cost~~ that would not reasonably have been expected to be incurred in the absence of the Act...

Response to O-32-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-13-13.

Comment O-32-4

Comment 1c: Notification of local jurisdiction

We appreciate the new requirement outlined in 18980.8(g)(8) that when costs are deemed covered for a recycling service provider, the PRO or Independent Producer must notify the local jurisdiction, at a minimum describing the nature and amount of the covered costs. However, it's important that we have access to this information prior to the PRO issuing payment so we can ensure the payment is not for a cost that is already being paid for through refuse rates. It would be helpful to ask for local government concurrence of the cost/expense, prior to payment issuance.

Response to O-32-4

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-13-17.

Comment O-32-5

Topic #2 -- Reuse and refill convenience
Section 18980.2.1. Curbside collection program convenience standard

• SFE supports small food establishments to make the transition from single use to reusable food service ware at an average grant of $500 per business; over 350 businesses have taken advantage of the grant since 2021, many of them choosing stainless steel, glass and ceramic dishware. We will be committed to supporting local implementation of reuse systems and oversight that may require use of the transparency requirements referenced above. Our refuse collection provider has not considered adding reuseable container collection to its services, and we want to reserve the option to consider this collaboration.

We recommend adding the following language to 18980.2.1(a)4:

(C) In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied.

Response to O-32-5

CalRecycle rejects this comment for the reasons set forth in response to comment O-84-3.

Comment O-32-6

Topic #3: Exemptions

Section 18980.2. Categorically Excluded Materials We echo the concerns regarding provisions (a)(2), (a)(5) and (a)(6) that have remained in the regulations, which would enact sweeping exemptions that threaten the integrity of the program. It is recommended to direct materials through the time-bound exemption process rather than categorically exempting packaging or packaging components. Should the language stay, improvement could be a time limit such that the producer does not get an automatic exemption and require a federal regulator conference. The submitter must justify why they do not qualify under unique challenges.

Response to O-32-6

CalRecycle partially rejects and partially accepts this comment. Regarding the suggestion to rely on "the time-bound exemption process," CalRecycle understands that to be a reference to the exemptions, including the one for "unique challenges," described in section 18980.2.4, which implements Public Resources Code section 42060(a)(3) and (4). Regarding section 18980.2(a)(5) and (6) of the proposed regulations, that approach is untenable because the products whose packaging would be exempt would be those identified in Public Resources Code section 42041(e)(2)(A). That packaging is by definition not "covered material," so the exemptions established in Public Resources Code section 42060(a)(3) and (4) cannot apply to it. Regarding the request to rely on the 18980.2.4 exemptions in lieu of the exclusion described in section 18980.2(a)(2) or to impose a time limitation for the exclusion, CalRecycle rejects that request for the reasons stated in response to comment I-59-2. Regarding the request to "require a federal regulator conference," that request is rejected because it is vague and because, as a state government entity, CalRecycle cannot impose requirements on "federal regulator[s]."

CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the

proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-32-7

Topic #4: Requirements for local jurisdictions and recycling service providers for end markets

Section 18980.11(a) stipulates the primary requirement of a local jurisdiction or recycling service providers is to collect the covered materials. What constitutes being included in a collection and recycling program? Does being listed on electronic resources suffice? Our carts are not currently comprehensively labeled and would take years and significant investment to update. Our residential mailers are distributed biannually at the most.

Section 18980.11(b) requires the local jurisdiction or recycling service provider to collect and transfer the covered materials to responsible end markets directly or to intermediate supply chain entities. Whose responsibility is it to identify the end market, vet it per Section 18980.4.2, and communicate the findings to jurisdictions and recycling service providers? The regulations are clear that the requirement to establish markets is held by the producers, and it is not clear outside of the annual plan how this would be regulated and the specific responsibility of jurisdictions.

Thank you for your consideration of these comments. Please reach out if you have questions or if you would like to discuss them further.

Sincerely,

Hilary Near
Commercial Zero Waste Senior Coordinator
San Francisco Environment Department

Response to O-32-7

Comment rejected. Regarding the comment on section 18980.11(a), the commenter does not propose any revision but rather asks "[w]hat constitutes being included in a collection and recycling program?" To the extent the commenter intended to request that CalRecycle revise the proposed regulation to address that question, no revision is necessary because 18980.11(b) unambiguously does that: The obligation of a local jurisdiction or recycling service provider is to physically collect and transfer certain covered materials for recycling purposes, not merely educate the public on how to discard the covered materials. In other words, the local jurisdiction or recycling service provider must facilitate physical collection and then transfer them for processing, not for disposal in a landfill. This provision does not address the predicate acts necessary to maximize efficiency of the program. Statute contemplates the latter being addressed through the PRO plan, which must fund education efforts "to improve the preparation and sorting of covered material" and "improvements to

collection . . . and other infrastructure necessary to achieve recycling rates." Regarding section 18980.11(b), the commenter again asks a question rather than recommends a revision: "Whose responsibility is it to identify the end market, vet it per Section 18980.4.2, and communicate the findings to jurisdictions and recycling service providers?" To the extent the commenter intended to suggest that the regulations be clarified to address that question, CalRecycle declines to make such a change. As the commenter acknowledges, the proposed regulations are clear concerning who holds the obligation to establish end markets (e.g., sections 18980.4.3 (development of responsible end markets) and 18980.4.2(c) (annual verifications of responsible end market). To the extent the commenter asserts the general need for it to be clearer how end market development "would be regulated," no response is necessary to such a vague assertion; CalRecycle cannot discern which provisions of the proposed regulations might be revised to address that assertion. Likewise, CalRecycle cannot discern what the commenter intended to suggestion with regard to the "specific responsibility of jurisdictions." Proposed regulation section 18980.11(a) through (c) expressly state the obligation placed on local jurisdictions.

O-33: Central Contra Costa Solid Waste Authority (David Krueger)

Comment O-33-1

RecycleSmart (the Central Contra Costa Solid Waste Authority) submits the following comments regarding the proposed SB 54 regulations. RecycleSmart is a joint powers authority that manages the solid waste and recycling programs for the cities and towns of Danville, Lafayette, Moraga, Orinda, Walnut Creek, and surrounding portions of unincorporated Contra Costa County. This letter is in response to the formal draft of the SB 54 regulations published on
August 22, 2025.

Despite the unanticipated delays in adopting the regulations, RecycleSmart appreciates CalRecycle's work to provide a robust set of regulations so that SB 54 can achieve its potential to accelerate a shift to a more circular economy for California. We very much appreciate the changes CalRecycle has made that are responsive to comments that we and
other local agencies have raised. We strongly support the intentions of the law to slow the flow of materials entering our communities, keeping materials in circulation through reuse and refill, and by creating packaging that is designed for recycling or composting at end of life. We also strongly support the EPR intent of the law – to shift the responsibility for the
costs of collecting and processing covered materials from jurisdictions and ratepayers to the producers of the materials themselves.

Response to O-33-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations,

does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-33-2

Topic #1: Funding Sources for Implementation

Chapter 3, Article 1 of SB 54 states that:

Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products.

It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.

However, the proposed regulations lack language that specifically: 1) requires service providers to request funding from the PRO for any new costs incurred associated with the implementation of SB 54, and; 2) prohibits service providers from obtaining funding from local jurisdictions, ratepayers, and taxpayers for any new costs incurred associated with the implementation of SB 54; and 3) prohibits service providers from receiving cost reimbursements from the PRO and then also recovering those same costs from ratepayers, taxpayers, or local jurisdictions ("double-dipping"). Without those protections in the regulations, the requirements of Section 42060.5 of the Public Resources Code and Article 11 of the draft regulations could become an unfunded mandate on local jurisdictions, with the costs of SB 54 ultimately being incurred by ratepayers and taxpayers instead of by the producers.

We appreciate the addition to section 18980.8 of the proposed regulations regarding reimbursable costs which requires that the PRO or Independent Producer "first" notify the local jurisdiction when costs are deemed covered for a recycling service provider. However, while this will be a helpful tool to enhance transparency, it is not a mandate or prohibition under law from including reimbursed costs in ratepayers' rates. We believe that such a prohibition is necessary. The proposed regulations place the burden of enforcement against "double-dipping" on local jurisdictions. We believe this enforcement should be the responsibility of CalRecycle. Below we have provided suggested draft language. We request that this language or similar be incorporated into the adopted regulations in order to ensure the intent of SB 54.

• *Recycling service providers shall request reimbursement from a PRO for any new costs incurred in order to comply with Section 42060.5 of the Public Resources Code.*

• Recycling service providers shall not request, accept, or obtain funds from Ratepayers, taxpayers, or local jurisdictions for new costs incurred by the recycling service providers in order to comply with Section 42060.5 of the Public Resources Code.

• If a service provider receives reimbursement from a PRO for costs incurred in order to implement Section 42060.5 of the Public Resources Code, that service provider shall not request, accept, or obtain funds from Ratepayers, taxpayers or local jurisdictions for reimbursement of the same costs for which they were reimbursed by a PRO.

• If a service provider receives funds from a PRO and also receives funds for reimbursement of those same costs from Ratepayers, taxpayers, or local jurisdictions, either before or after being reimbursed by the PRO, that service provider shall refund all such funds to the Ratepayers, taxpayers, or local jurisdictions. The Department shall enforce this requirement, shall investigate related complaints from Ratepayers, taxpayers and local jurisdictions, and may assess penalties on recycling service providers equal to the amount of any funds not refunded to the Ratepayers, taxpayers, or local jurisdictions plus 10%.

Response to O-33-2

Comment rejected. The commenter reads into statute expansive authority for CalRecycle over recycling service providers, including the authority to directly affect rate-setting practices and to assess penalties not described anywhere in statute. In contrast, the statute imposes no affirmative obligation on local jurisdictions or recycling service providers other than the one pursuant to Public Resources Code section 42060.5(a) (inclusion of certain covered material categories in their collection and recycling programs). There is no open-ended grant of enforcement authority that would be required for CalRecycle to adopt the proposed changes concerning recycling service providers' funding requests, recycling service providers' funding, and the potential for "double-dipping." Regarding the latter, CalRecycle also responds as stated in response to comment I-51-1.

Comment O-33-3

Topic #2: Enforcement Oversight by the Department - Section 18980.13

As discussed in our comments dated November 4, 2024, we continue to believe that penalties of up to $50,000 per item per day for violations by local jurisdictions for failure to include covered materials in their collection programs is illogical and unreasonable. **SB 54 does not authorize these penalties**. The law authorizes monetary penalties for only PROs, producers, retailers, and wholesalers. (Public Resources Code sections 42080-42084.) This is an error in the draft regulations that needs to be corrected.

References to “PRO” and “producer” appear repeatedly in sections 42080-42084 of the Public Resources Code, the SB 54 enforcement statutory provisions. There is no reference to local jurisdictions. In section 42080, “entity” is used to refer to PRO,

producer, wholesaler, and retailer. When in section 42081 there is a reference to “any entity,” the statute goes on to provide a single exception for small producers, retailers, and wholesalers that are listed in section 42060(a)(5) – with no mention of an exception or extension for certain local jurisdictions or recycling service providers (as in 42060.5(b)), or rural counties/jurisdictions (as in 42060.5(c)), which one would expect to see if they were among the types of “entities” that could be penalized under that section. Producers and PROs are the only specific types of entities mentioned in section 42081. Therefore, “any entity” in section 42081, and all the enforcement provisions of that Article 5, are intended to refer only to producers, PROs, retailers, and wholesalers. There are no other enforcement provisions in the SB 54 statutes.
Again, this error should be corrected.

Response to O-33-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-73-3, which is substantively the same as this comment.

Comment O-33-4

Topic #3: Categorically Excluded Materials – Section 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is “necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging….”

We appreciate the revisions made in section 18980.2(a)(2) of the current version of the draft regulations to clarify these exclusions apply only “if it is not reasonably possible to use other packaging or packaging components…” and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

We understand that this new categorical exclusion is intended to provide further clarity to statute section 42060(b), which, in summary, states that SB 54’s regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within section 18980.2.4(c)(4), under, for example, (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to two to five years, while excluded materials are permanently removed from the law’s purview. Care must be taken when excluding materials so as not to unintentionally weaken SB 54.

Recommendation:

We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Should the Department determine that section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

- Entities should be required to explain why an exemption under section 18980.2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for applying an exclusion versus an exemption, and redirect requests to a more appropriate pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):

"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines~~, and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" because federal guidelines are not always compulsory.

- Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-33-4

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, which is substantially identical to this comment.

Comment O-33-5

We are also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6). As we understand it, the inclusion of over-the-counter drugs into the list of categorically excluded materials conflicts with the legislature's intent when it enacted SB 54. Over-the-counter drugs already use packaging that is well-suited for source reduction, packaging material changes, and reuse and refill.

Response to O-33-5

CalRecycle rejects this comment for the reasons provided in response to comments O-49-1.

Comment O-33-6

Furthermore, we strongly oppose the regulatory change that exempts the secondary and tertiary packaging of excluded materials (18980.2(b)). We believe that these changes are unnecessary and go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-33-6

Comment rejected. CalRecycle rejects the suggestion to remove section 18980.2(b) because the statute (Public Resources Code section 42041(e)(2)) expressly excludes packaging for certain goods from the definition of "covered material" and defines packaging for any good to include its secondary and tertiary packaging (section 42041(s)(3)). Also, section 18980.2(b) does not purport to affect the scope of exclusions under 18980.2(a)(2). Under the latter provision, packaging is excluded based on conflicts with federal law, not based directly on the goods packaged, and the packaging must satisfy the requirements stated for exclusion, whether it is primary, tertiary, or secondary. Lastly, while the intent of the "authors" is legally relevant to the extent it is expressed in legislative history and can resolve ambiguities in the text of statute, the "intent" of "stakeholders that negotiated this bill" is not legislative history.

Comment O-33-7

Topic #4: Methodology for Recycling Rate Determination – Section 18980.3.2

For new covered material categories with a *pending* recycling rate, it is more rational to presume that they do NOT achieve the required recycling rate under Public Resources Code section 42050(c), rather than that they do meet the rate. Without this presumption, producers could avoid the recyclability requirements by changing to a new form of packaging every year, circumventing the law and unintentionally disadvantaging other producers. It is challenging to determine, and to meet, the recyclability requirements of

SB 54, and new items should not be exempt from going through the process that all the other covered items that have met the required recycling rate have had to go through.

Response to O-33-7

CalRecycle rejects this comment for the reasons stated in response to comment O-78-6.

Comment O-33-8

Topic #5 – Eligibility for Being Labeled "Compostable" – 18980.3.3(c)(5)

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC § 42357(g)(1)(E).)

Section 18980.3.3(c)(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste." This language is too broad. Marketing and labeling can be misleading and are not even mentioned in PRC section 42357(g)(1)(E).

Recommendation:

A potential fix for this issue would be to simply delete the second sentence of section 18980.3.3(c)(5), as follows:

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

Response to O-33-8

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

Comment O-33-9

Topic #6: Definition of Hazardous Waste

The regulations reference the *federal* definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. This problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

A more appropriate definition is the one already existing in Public Resources Code Section 40141, which defines "hazardous waste" for all of Division 30 of the Public Resources Code except where "the context requires otherwise." That section defines "hazardous waste" to include, but does not limit the definition to, RCRA hazardous waste. It also cross-references Health and Safety Code 25117, which includes any wastes that meet criteria adopted by the Department of Toxic Substances Control (DTSC).

The legislature has repeatedly stated, and the courts have upheld, that "it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law" (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

Thank you for your consideration of these comments.

Response to O-33-9

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

O-34: City of Long Beach (Tory Romero)

Comment O-34-1

Local jurisdiction compliance

Section 18980.11(a) reads: No later than the date the Department first approves a PRO's plan, local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list pursuant to subdivisions (c) and (d) of section 42061 of the Public Resources Code.

Recommendation: Amend 18980.11(a) to set January 1, 2028 as the date for local jurisdictions and recycling service providers to satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code.

The current draft of regulations provides a timeframe which can vary based on the timeliness of the PRO's plan and the timeliness of the Department's review period. Since the PRO plan must be approved by January 1, 2027, we recommend one year past this date so that local jurisdictions and recycling service providers have a determined date to satisfy their requirements and can plan to make necessary changes to collection programs, contracts, education campaigns, etc and will be adequately reimbursed through the implementation of the PRO plan to feasibly make these changes.

Response to O-34-1

CalRecycle rejects this comment. There is no indication in statute that the Legislature intended for the requirement that local jurisdictions include certain covered material categories in their recycling programs not to take effect until 2028. That timeline would be incongruous, given that recycling rates requirements must be satisfied by January 1, 2028, and that statute required CalRecycle to publish the covered material categories list far in advance of that date. Moreover, the commenter's concerns are adequately addressed by PRC section 42060.5(b), under which a jurisdiction is entitled to an exemption if it cannot practicably comply with 42060.5(a).

Comment O-34-2

Reuse

Section 18980.2.1 (a)(4) currently does not allow for scalable reuse programs that are currently on the market.

Recommendation: Add the following: (C) In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied.

Response to O-34-2

CalRecycle rejects this comment for the reasons set forth in response to comment O-84-3.

Comment O-34-3

AD Facility as an Intermediate Supply Chain Entity

The City is concerned that due to how the definition of compostable is determined for

the CMC list, cities which utilize an anerobic digestion (AD) facility to comply with SB1383

requirements will be forced to accept material that can only be processed at a compost facility. AD facilities cannot be classified as a responsible end market for compostable covered materials since compostable packaging products are only designed to break down at industrial compost facilities. Therefore, in order to serve local jurisdictions which currently divert their organic materials to AD facilities, AD facilities must clearly qualify as an intermediate supply chain entity under SB 54. AD facilities will be required to sift out covered materials or send their digestate to a responsible end market to be further processed and composted, due to the inclusion of covered materials, in order to be able to comply with accepting all covered materials. As this is an additional need created by this legislation, the regulations must specifically state that the PRO's budget must fully fund the transport of digestate to compost facilities as it is required by statute that the PRO funds costs needed to implement this chapter instead of burdening local jurisdictions and ratepayers.

Recommendation: Amend section 18980.4(a)(4)(B) by striking the subsection requiring covered materials to fully biologically decompose, and include the following language:

(B) The recycled organic product generated by the entity which receives and processes covered materials or derivative materials will do so according to standards, verified by a third party consistent with the management of other feedstocks to produce a stable product.

Response to O-34-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), 42051.1, and 42060, and the recommended change is not necessary to the implementation of the Act. To the extent this comment is concerned with the characterization of anaerobic digestion facilities as responsible end markets, no change is necessary. Section 18980.4(b) of the proposed regulations already clearly and adequately specifies that an entity is an intermediate supply chain entity, and not an end market, with respect to any portion of material that it accepts and transfers to other entities for further processing. Additionally, to the extent this comment recommends revising the proposed regulations to specifically state that the PRO's budget must fully fund the transport of digestate to compost facilities, no change is necessary. The Act, including PRC sections 42051.1(c) and (j)(1)(B), and proposed regulations, specifically section 18980.8(g), already clearly and sufficiently provide for the costs that a PRO or Independent Producer is required to cover under the Act. Additionally, section 18980.4.3(a)(2) of the proposed regulations further requires a PRO or Independent Producer to describe in its plan how it will facilitate material recycling and assist end markets in satisfying the requirements of section 18980.4, including, among other requirements, by providing financial support to local jurisdictions and intermediate supply chain entities. Therefore, the relevant financial support requirements are already addressed in the proposed regulations, and no further change necessary. To the extent this comment recommends amending section 18980.4(a)(4)(B) by striking the requirement for

full biological decomposition, no change is necessary or appropriate. See the responses to comments O-75-12, B-6-5, and O-83-5. The current standard of proposed section 18980.4(a)(4)(B) is reasonable, appropriate, necessary, and consistent with CalRecycle's authority under PRC section 42041(ad).

Comment O-34-4
Eligibility to be Labelled Compostable

Section 18980.3.3(c)(5) regarding criteria required for eligibility to be labeled compostable states, "For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste" However, only items which will truly be composted at the end of their use should be eligible.

Recommendation: change this language to include requirements of AB 1201, include materials which can break down at AD facilities, and remove "or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."

Response to O-34-4

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7. Also, the suggestion that the proposed regulations should "include requirements of AB 1201" is nonsensical because section 18980.3.3(c) and its subparts do so. Regarding the suggestion to "include materials which can break down at AD facilities," no change is necessary because nothing in the proposed regulations categorically excludes those (or any) materials from satisfying the criteria for being eligible for being labeled "compostable."

Comment O-34-5
Categorically Excluded Materials

Section 18980.2(a) defines packaging that is not covered materials regulated under SB54. As currently written, the exclusions in this section are overly broad and exclude most food packaging including primary, secondary, and tertiary pieces which are included for food safety and regulated under FDA and FSMA regulations. This section states, "In accordance with paragraphs (1) and (2) of subdivision (b) and with subdivision (d) of section 42060 of the Public Resources Code, packaging or packaging components used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration. A determination of exclusion pursuant to this paragraph may consider standards to prevent microbial contamination or to maintain the safety or structural integrity of packaging under the

Food, Drug, and Cosmetic Act; the FDA Food Safety Modernization Act; the Poultry Products Inspection Act; the Federal Meat Inspection Act; the Egg Products Inspection Act; or other applicable food or agricultural regulations, rules, or guidelines "

Recommendation: Lead oversight of categorically excluded materials to guide producers to packaging that would be included in SB54 instead of remaining as single-use waste. Part of the statement above: "..if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by.." highlights an important component – there are other packages which are available and can be included as a covered material. The goal should be to not undermine the funding mechanism of SB54 – producer's financial responsibility incentivizes a shift towards low waste solutions. The regulations as drafted currently allow most food packaging to be excluded which will have grave impacts on the funding mechanism. Additionally, this will cause ongoing consumer confusion, ongoing contamination issues, and ongoing high disposal costs.

Recommendation: The following additional packaging is recommended to remain in scope, as developed by Mark Dargay, Director of Regulatory Compliance of Comprehensive Food Safety and National Stewardship Action Council member:

"As written, this framework has the potential to significantly reduce the applicability of SB54 to much of the food sector. While certain tertiary or display-related packaging may remain within scope, the vast majority of packaging used to protect food safety and shelf stability would likely fall under exclusions. This interpretation could substantially limit the regulation's intended impact on packaging reduction and recycling within the food industry.

Packaging remains in scope if it meets any of the following:

1. Marketing/Display Only – Secondary or tertiary packaging primarily designed for shelf

presentation, branding, or consumer appeal (e.g., multipack sleeves, decorative

wraps).

2. Logistics Convenience – Outer cases, trays, or shrink wraps used for bundling,

shipping efficiency or retail handling where food safety is not compromised by

Elimination

3. Excessive Redundancy – Layers of packaging that do not materially contribute to product protection or shelf stability.

4. Non-Regulatory Features – Components added for consumer convenience (e.g., resealable overwraps, promotional inserts) without a direct safety requirement."

Response to O-34-5

Comment partially rejected and partially accepted. CalRecycle rejects the commenter's first recommendation because CalRecycle cannot parse the phrase "[l]ead oversight of categorically excluded materials." CalRecycle cannot discern what regulatory change that phrase advocates for. Similarly, the phrase "included in SB54 instead of remaining as single-use waste" does not scan because the statute does not prohibit "single-use" materials. The commenter may have intended to propose that the regulations not exempt packaging for which alternatives that can comply with SB 54 and all federal requirements are available. However, that is exactly the effect of 18980.2(a)(2).

Regarding the second recommendation, the commenter quotes a portion of comment I-33-3 and then paraphrases the suggestions in that comment for the types of packaging that should not be exempt. CalRecycle therefore rejects the second recommendation for the reasons stated in response to that comment.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-35: CALPIRG Education Fund & Environment California Research and Policy Center (Jenn Engstrom)

Comment O-35-1

October 7, 2025

CalRecycle Director Zoe Heller
Department of Resource Recycling and Recovery
1001 I Street | Sacramento, CA 95814

Re: Request to impose strong regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)

Dear Director Heller,

CALPIRG and Environment California were both proud to support the passage of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) to

address our growing plastic pollution crisis. We understood then that if well-implemented, SB 54 could reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians.

We worry now that the critical intentions of this law–which thousands of Californians support–are at risk.

We understand this is both a meaningful and complex policy, and we appreciate your work developing the regulations. However, several provisions in the new draft regulations are inconsistent with the governing statute established by SB 54 and exceed CalRecycle's authority under the law.

Californian consumers want alternatives to wasteful packaging and single-use plastic products. We've had thousands of conversations with Californians at their doors, at community events, and on campuses - what we've heard loud and clear is that Californians want solutions to waste. They understand that their own decisions to be "responsible" consumers are not sufficient to solve the problem at hand, and they want government and industry to take responsibility for the systemic changes needed to make less wasteful, less polluting packaging the norm, not the exception.

Ensuring SB 54 is enforced with strong regulations is the best forum we have for achieving this transition quickly.

We are incredibly disappointed by the changes that weaken protections against harmful chemical recycling. The language of SB 54 and the previous regulations were clear that technologies were prohibited if they created more hazardous waste than mechanical recycling. Unfortunately, the current regulations make the prohibition more vague and moot with a permit. This is not how we should be protecting our communities from harmful technologies.

Chemical recycling technologies, sometimes called "advanced recycling," are expensive, inefficient, and hazardous to human and environmental health. Plastics-to-fuel facilities do not turn plastic into new plastic, do not reduce demand for virgin plastics, and produce fossil fuels that are plastic into new plastic, do not reduce demand for virgin plastics, and produce fossil fuels that are sometimes burned, contributing to air pollution and global warming. Even technologies that could, in theory, convert plastic waste to new plastics pose major threats to our environment and health, as they often release carcinogenic chemicals into the air.

CalRecycle should strengthen the regulations so that only real recycling technologies are allowed in our state, not chemical recycling. Failing to do so risks the health of Californians and threatens to undermine the key intent of this law: to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

Response to O-35-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology.

See, also, CalRecycle's responses to comments O-6-1 and O-62-1.

Comment O-35-2

Additionally, we are concerned that the new, broad exemptions excluding food packaging "necessary to comply with rules, guidance, or other standards issued by the United States Department of Agriculture or the United States Food and Drug Administration" risks creating major unintended loopholes. This exclusion will deal a massive blow to the intent of the law and unnecessarily limit the amount of waste this law can prevent. Entire categories of food, agricultural, and over-the-counter drug packaging should not be excluded carte blanche. Producers seeking exclusion should be required to provide detailed verification subject to public notice and comment. Any exclusions granted should be time-bound. Without these changes, we fear much of the plastic waste this law was passed to prevent will continue to fill our landfills and litter our communities.

Response to O-35-2

CalRecycle partially rejects and partially accepts this comment as described in response to comment O-111-2, which is substantively the same as this one.

O-36: CALPIRG Education Fund, CALPIRG Students, Environmental Action, Environment CA Research & Policy Cen (Fiona Hines)

Comment O-36-1

October 6, 2025

Zoe Heller, Director
Department of Resource Recycling and Recovery
1001 I Street | Sacramento, CA 95814

Re: Request to impose strong regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)

Dear Director Heller,

California has an opportunity to greatly reduce plastic pollution scourging our state and set a national example for bold action to address the plastic waste crisis.

If fully implemented, our landmark anti-plastic pollution law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), will reduce plastic pollution and litter, protect public health, improve reuse and recycling, and lower costs for all Californians. However, the current draft regulations to implement the act greatly weaken the law, with broad exemptions for food products and weakened protections against a process known as "chemical recycling."

"Chemical recycling," sometimes called "advanced recycling," is intended to convert plastic waste into fuel or raw materials for new plastic, but it is mostly a new euphemism for an old and dirty practice: incineration. Plastics-to-fuel plants are not recycling, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. This is not a solution to the plastic waste crisis and should not be allowed in our state.

California should be a leader in protecting our communities from toxic pollutants and the current regulations do the opposite.

We urge strong implementation of SB 54 that reflects the intent of the law, which is to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

Sincerely,

The 4,004 below Californians

[The list of names included in the submission is omitted here but available in the original copy of this comment, which is included in the rulemaking file]

Response to O-36-1

CalRecycle rejects this comment for the reasons stated in responses to comments O-6-1, which is substantively similar to this one, and O-62-1. Regarding "incineration," PRC section 42041(aa)(2)(B) expressly excludes that from the definition of "recycling," and nothing in the regulations contradicts that exclusion.

O-37: California State Association of Counties and SWANA CA LTF (Jordan Wells)

Comment O-37-1

On behalf of the California State Association of Counties and Solid Waste Association of North America’s (SWANA) California Chapters Legislative Task Force, we appreciate

the opportunity for engagement during the formal rulemaking period and write with comments on the August 12, 2025 version of the draft regulations.

Section 18980.1. Definitions

The proposed regulations include a definition of “alternative collection”, which is not defined in SB 54. The regulations attempt to differentiate between “curbside collection”, which is defined in SB 54 and “alternative collection”, which is not defined.

Defining “alternative collection” to be distinct from “curbside collection” is helpful, but the definition needs additional language to ensure that it does not supersede local jurisdiction agreements, contracts, or franchises. Allowing “alternative collection” to directly conflict with existing local jurisdiction agreements, contracts, and franchises could lead collectors to cherry-pick materials with high market value and leave the remaining materials for the jurisdiction to collect and finance. This behavior can also result in inconsistent collection of materials when the market value is low. The regulations should specify that “alternative collection” is not “curbside collection”, but the definition should also prohibit “alternative collection” methods and practices to directly conflict with local government agreements, contracts, and franchises. As such, we recommend the following amendment to the proposed definition:

(2) “Alternative collection” means a program that collects covered materials, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection, and is not “curbside collection,” as defined in subdivision (g) of section 42041 of the Public Resources Code, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction ***and does not directly conflict with local jurisdiction agreements, contracts, or franchises***.

Response to O-37-1

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2 and B-42-1.

See, also CalRecycle's response to comment O-47-2 regarding effects on franchise agreements.

Comment O-37-2

Section 18980.8. Producer Responsibility Plan

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

The regulations should specify that the Producer Responsibility Organization’s (PRO) Producer Responsibility Plan (Plan) must also include the method by which payments will be made to local jurisdictions. The payment schedule should be identified in the regulations and not left up to the PRO to determine in the Plan, and payments should be made on a quarterly basis, at a minimum.

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

Local jurisdictions should receive notice of this determination prior to the payment of covered costs to recycling service providers. Providing local jurisdictions with the opportunity to review this information will help ensure that payments made to recycling service providers do not include recycling service provider costs already recovered in existing contracts with the local jurisdiction.

- **(h) - Dispute Resolution Process**

This section should also include disputes related to the amount that a local jurisdiction claims for payment by the producers or PRO as "covered costs."

Response to O-37-2

Comment rejected. Regarding 18980.8(g)(4), no change is required because the requirement that the PRO plan must set forth reasonable periods for covered cost determinations and payments addresses the commenter's concerns. That element of PRO plans, just like very other element of plans, are subject to CalRecycle's approval. That approval will be subject not just to the specifics provided in regulations; they are also subject to provisions of the statute itself, some of which might not have required clarification or interpretation via regulation. For example, considered as a whole, a PRO plan and the associated budgets must:

• include "[a]ctions and investments that the PRO will implement in order to meet the requirements of this chapter" (Public Resources Code section 42051.1(b);
• show "[h]ow the PRO will meet the requirements of this chapter, including, but not limited to, how it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050 based on the needs assessments (Public Resources Code section 42051.1(c)(1)
• how demonstrate how it will be "supplemental to, and not in conflict with, disruptive of, or adversely affective, the performance of the solid waste network providing services in accordance with local solid waste handling requirements and the intent described in Section 40004, and how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure(Public Resources Code section 42051.1(b)(c)(3)(A);
• demonstrate "how the plan will be implemented in a manner utilizing solid waste collection programs and solid waste facilities as the designated system for the curbside collection and processing of covered material" (42051.1(b)(c)(3)(B);
• include "efforts to use education and promotion to encourage proper participation in recycling and composting collection [and] ensure coordination between these efforts and existing educational and promotional efforts" (Public

Resources Code section 42051.1(e); and
• address how the PRO program will "fully fund the costs necessary to implement this chapter," including those "associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs," with such costs including "costs related to both curbside and noncurbside collection programs" (Public Resources Code section 42051.1(j)(1)(B)).
CalRecycle's review of a PRO plan necessarily considers the above requirements, and that consideration, which will be informed in party by comments provided by the advisory board and the public, provides the context for its evaluation of whether the plan provides "reasonable periods" for covered cost determinations and payments. In that context, CalRecycle can assess whether the process required by Public Resources Code section 42051.1(g)(1) includes periods that are objectively reasonable.
Regarding 18980.8(g)(8), no change is necessary because section 18980.8(g)(8) already requires the suggested process: notice is provided to the local jurisdiction when the determination of covered costs are made; that determination necessarily happens before payment is made. Also, as explained above and in response to comment I-51-1, the statute provides mechanisms for preventing harm that may result from costs associated with existing contracts.
Regarding 18980.8(h), no change is necessary because subdivision (h) addresses precisely the disputes described by the commenter: those concerning a local jurisdiction's claims of costs that are "covered costs."

Comment O-37-3

Section 18980.13.2. Administrative Civil Penalties

• (a) Any entity, such as a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of the Act or this chapter, such participants shall not be exempt from penalties on the grounds that their noncompliance was caused by the PRO's conduct.The proposed regulations are predicated on the assumption that the term "any entity" in Public Resources Code (PRC) 42081(a)(1) broadens the scope of its enforcement authority; however, that term should be defined in context of the other provisions included in Article 5 of SB 54. PRC 42081 seeks to interpret and implement PRC 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of PRC 42080.

PRC 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. PRC 42081 in turn:
o Sets the amount of penalties;
o Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;

o Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and,
o Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO, etc.

PRC 42083 and 42084 also allows CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Response to O-37-3

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-37-4

Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither PRC 42080 nor PRC 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the proposed regulations would have inappropriately subjected local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot implement a corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling away from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into CalRecycle's existing Electronic Annual Report (EAR) system, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they collect the required recyclable or compostable covered material categories.

Considering that the PRO is responsible for reimbursing local governments for SB 54 implementation costs, failure to include all covered materials in local collection and recycling programs is a strong indication that the local jurisdiction has not made a good faith effort to implement its diversion programs. This existing process is ideal, as it affords a more holistic review of the jurisdiction and considers whether certain extraneous factors impacted the jurisdiction's compliance, including whether the PRO failed to reimburse the jurisdiction for its implementation costs.

Response to O-37-4

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-59-8, which is substantively the same as this comment.

O-38: Nixon Peabody LLP (Chris Schlag)

Comment O-38-1

On behalf of multiple manufacturing clients operating across the industrial and business-to-business ("**B2B**") sectors that do business within California, we are providing comments on CalRecycle's proposed regulations to implement California's Plastic Pollution Prevention and Packaging Producer Responsibility Act ("**SB 54**") ("**Proposed SB 54 Implementing Regulations**" and "**Proposed Regulations**").

We appreciate and support the State's commitment to reducing plastic pollution and enhancing circularity, as well as share a common goal of achieving responsible, long-term solutions for the management and disposal of packaging materials. We are, however, concerned that CalRecycle's Proposed SB 54 Implementing Regulations introduce significant, novel, and unreasonable Extended Producer Responsibility ("**EPR**") compliance burdens, particularly for industrial and B2B manufacturers. As discussed in greater detail below, the proposed regulations do not adequately account for the complexity and diversity of manufacturing supply chains, logistics, and distribution activities. They also establish entirely new compliance obligations that extend well beyond both California's borders and the legislative intent of SB 54. If adopted in their current form, these regulations impose disproportionate operational and financial burdens on affected businesses and delegate substantial regulatory authority and oversight to non-governmental entities, with limited mechanisms for accountability, fairness, or transparency.

I. SB 54 Targets Single-Use Packaging, Not B2B or Industrial Materials

SB 54 was enacted with the express purpose of addressing the environmental and public health impacts of certain types of packaging and food service ware, with a particular emphasis on postconsumer single-use plastic items.1 The Legislature deliberately focused on consumer-facing materials, as reflected in SB 54's

___

1. See e.g., Senate Bill No. 54, Legislative Counsel's https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54.

___

plain language, which defines "single-use packaging" and "plastic single-use food service ware" as materials that are routinely recycled, disposed of, or discarded ***by the user or consumer*** after their contents have been used or unpackaged.2 The term "consumer" appears in SB 54 a total of 42 times,3 most often in the context of describing the impacts of single-use items encountered by consumers and underscoring the State's goal to reduce confusion and improve recycling outcomes for consumer-facing packaging. Notably, there is no explicit mention in SB 54 of any legislative intent or desire to regulate materials that are not consumer-facing or are not single-use.

The term "covered material" is specifically defined in SB 54 to include "single-use packaging that is routinely recycled, disposed of, or discarded after use, and ***is not*** typically ***refilled*** or ***reused*** by the producer." The definition was also carefully constructed to exclude certain types of packaging from its requirements, including:

 Packaging used for federally regulated products, such as medical products, devices, and prescription drugs, animal medicines and drugs, infant formula, medical food, fortified nutritional supplements, insecticides, rodenticides, fungicides, hazardous materials, hazardous or flammable products, and beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act ("**Bottle Bill**").

 Packaging for long-term protection or storage, and paint covered by the paint recovery program.

 Packaging materials that do not undergo separation from other materials at a commingled processing facility, are **recycled at a responsible end market**, and have **demonstrated recycling rate**.4

Therefore, a straightforward reading of SB 54 and its legislative history makes clear that the EPR obligations established by the law were intended to focus on single-use packaging and food service ware primarily encountered in the consumer context. Legislative analyses for SB 54 also repeatedly emphasize the issue of single-use consumer items.5 Consistent with this focus, SB 54 was not intended to regulate packaging that is designed for or primarily used in B2B, industrial, or manufacturing settings, especially where such packaging is not single-use or does not enter commingled consumer waste streams.

II. CalRecycle's Proposed Regulatory Definitions Overstep SB 54 by Expanding EPR to B2B and Industrial Materials

CalRecycle's definitions in the Proposed SB 54 Implementing Regulations for "producer," "covered material," and, most notably, "consumer," significantly broaden the scope of SB 54 beyond its intended focus on "single-use" items. For example, the

Proposed Regulations define “consumer” as “the end user of an item, **or the last person in the supply chain who acquires and uses an item**.” 6 The Proposed Regulations would further clarify that a “consumer” may include a retailer that uses a covered item in its business operations—regardless of whether the item is single-use, consumer-facing, or ultimately returned to a manufacturer or distributor for refilling or reuse.

___

2. See id. See also e.g., Assembly Committee on Natural Resources Hearing and Analysis on SB 54, (Jun. 26, 2022), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54#.

3. SB 54 also states “It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to rate payers, and increase system efficiency.”

4. See Senate Bill No. 54; Cal. Pub. Resource Code § 42041(e). See also generally, Senate Bill No. 54 Bill Analysis, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54 (with reports from the Assembly Appropriations, Assembly Floor Analysis, Senate Floor Analyses, Assembly Natural Resources, Senate Floor Analyses, and Senate Environmental Quality discussing the intent and purpose of SB 54).

5. See generally, Senate Bill No. 54 Bill Analysis, supra n. 2.

6. See Section 18980.2.1(a)(B)(Proposed).

___

CalRecycle’s proposed definition diverges from the widely accepted understanding of “consumer” as being an individual who purchases goods for personal, household, or non-commercial use.7 CalRecycle’s approach also sharply contrasts with how the Legislature consistently referred to “consumers” in SB 54. This expanded definition of “consumer,” together with the proposed regulatory definitions for “producer” and the producer identification hierarchy, would extend EPR requirements to packaging materials that are not single-use and are used exclusively in business or industrial contexts. These types of materials simply were not the focus of SB 54 and should not be subject to EPR requirements.

Expanding these definitions to allow EPR obligations to attach to non-single-use and non-consumer-use materials would fundamentally alter the scope of the State’s EPR program, imposing significant and unintended regulatory burdens on manufacturers that

were never meant to be covered. This approach is also inconsistent with the legislative history of SB 54 and diverges from how other states have implemented similar EPR programs, resulting in regulatory inconsistency, increased administrative burden, and logistical challenges for manufacturers operating both within and outside California.8

CalRecycle should revise all relevant regulatory definitions in the Proposed Regulations to align with the intent of SB 54 and provide regulatory clarity. In particular, the definition of "consumer" should be updated to reflect the generally accepted meaning of the term—namely, an individual who purchases goods for personal, household, or non-commercial use. This revision would appropriately refocus the scope of materials subject to EPR on single-use packaging and food service ware that are primarily encountered in the consumer context, consistent with the Legislature's original intent.

III. CalRecycle's Proposed Regulations Blur the Scope of EPR Requirements for Industrial and B2B Packaging Materials

CalRecycle's Proposed SB 54 Implementing Regulations provide definitions that suggest packaging used exclusively in B2B transactions for shipping and logistics, such as shrink wrap, pallet wrap, protective foams, and corrugated materials, could fall within the definition of "covered material." These materials are specifically designed for the transport and protection of goods between manufacturers, distributors, and retailers, and are not generated or handled by individual consumers or households. Unlike consumer-facing packaging, B2B packaging serves a distinct purpose, follows a separate distribution pathway, and is managed through commercial end-of-life systems. These materials are also not intended for, nor typically encountered by individual consumers or households.

In other jurisdictions with EPR programs, such as Oregon and Colorado,9 industrial and B2B packaging materials are explicitly excluded from EPR requirements due to their unique role in the supply chain and their typical reuse, on-site recycling, or management through established B2B channels. In contrast, CalRecycle's hierarchy for determining producer status and definitions in the Proposed Regulations suggest that industrial and B2B packaging, including materials that may be refillable or reusable, are

___

7. The definition also departs from how California has defined "consumer" under other state laws. For example, under the California Consumer Privacy Act ("**CCPA**"), a consumer is defined as a natural person who is a California resident. This broad definition includes any individual who resides in the state for a non-temporary purpose or is a domiciliary of the state and temporarily away, but notably excludes legal entities like corporations, which do not have personal data privacy rights under the CCPA. The proposed definition here also conflicts with California's use of "consumer" in connection with regulated consumer products, which are generally considered to be a tangible item or product component produced or distributed for sale to a consumer for personal, family, or household use. See CA Health & Safety Code § 108042 (2024).

8. For example, both Oregon and Colorado have expressly excluded certain B2B and industrial-use materials (e.g., pallets) in their EPR frameworks. See Colorado's Producer Responsibility Program for Statewide Recycling Act (HB 22-1355) and Oregon's Plastic Pollution and Recycling Modernization Act (SB-582B), and corresponding implementing regulations ORS 459A.863(6)(b)(D)-(E) and CO Rev Stat § 25-17-703(13)(b)(VI) (2024), respectively.

9. For example, Oregon's EPR Program excludes packaging materials used in industrial settings and manufacturing through language in ORS 459A.863(6)(b)(D)-(E) stating a "covered product" does not include "[r]igid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack or similar device," and "[s]pecialty packaging items that are used exclusively in industrial or manufacturing processes." Colorado's EPR Program similarly excludes "[p]ackaging material used exclusively in industrial or manufacturing processes," from its definition of "covered products" in CO Rev Stat § 25-17-703(13)(b)(VI) (2024).

___

subject to EPR requirements when classified as "secondary" or "tertiary" packaging.10

This result is further complicated by CalRecycle's producer identification framework, which introduces different producers for industrial and B2B packaging materials based on branding, contractual relationships (e.g., licensor vs. licensee), product use, occurrence of sale or distribution in California, the "consumer" definition, and when packaging is added to a product.11 CalRecycle's producer identification framework and approach result in a clear inference that commercial, non-single-use, and non-consumer packaging, which is used solely in manufacturing settings may have EPR requirements. Further, the materials may have different designated producers at various times, even when these materials are circulated between business entities in a value chain as part of a circular system. This approach can create significant confusion over material management responsibilities and result in unintended consequences, including potentially reducing the current circular system and creating additional waste, particularly for secondary and tertiary packaging components that are not single-use. For example, by blurring the application of EPR requirements to industrial and B2B materials, CalRecycle risks unintentionally disincentivizing established circular programs and take-back initiatives that are already effective within the business sector. Imposing EPR fees on these materials could lead to duplicative material management costs and may prompt businesses to discontinue voluntary circular or take-back programs under the assumption that these materials are now the responsibility of the EPR system. This outcome would undermine existing, efficient recycling and reuse systems, contrary to the broader goals of SB 54.

Including B2B packaging within California's EPR framework would not only depart from national and international norms but would also run counter to the legislative intent of SB 54, which was designed to address consumer-facing, single-use items entering municipal waste streams—not industrial transport packaging. Additionally, extending EPR obligations to these materials would exceed SB 54's intended scope and impose

significant compliance costs and operational burdens on manufacturers, many of whom lack control over the materials' end-of-life. It would also risk diverting resources away from SB 54's core goals of reducing plastic pollution, enhancing recyclability, and advancing a circular economy for singleuse consumer items. Other EPR programs recognize the importance of keeping business materials such as shrink wrap, pallet wrap, protective foams, and corrugated materials outside the definition of "covered material" to continue incentivizing circularity and B2B take-back initiatives.12

For these reasons, we respectfully urge CalRecycle to revise the regulatory definitions to expressly exclude B2B and industrial packaging materials from the definition of "covered material," in alignment with the intent of SB 54 and consistent with established best practices in other EPR jurisdictions.13 In addition, we recommend that CalRecycle revise the proposed producer hierarchy and its overall approach to identifying "producers" and "covered materials" to promote regulatory clarity and ensure alignment with the statute's consumer-facing focus. In particular, the regulations should be simplified to allow manufacturers to readily determine their compliance obligations and to avoid unintended inclusion of materials already managed through effective, closed-loop commercial systems. This clarity is essential to preserve and support existing circular systems for B2B and industrial packaging, while maintaining SB 54's focus on reducing waste from single-use packaging and improving outcomes within the municipal waste stream.

IV. CalRecycle's Proposed Regulations Improperly Delegate Core Regulatory Functions to a Non-Governmental Entity

CalRecycle's Proposed SB 54 Implementing Regulations grant significant authority to the State's approved Producer Responsibility Organization(s)("**PROs**") to administer key elements of the program, including

___

10. "Secondary" and "tertiary" packaging are not, however, defined in the Proposed Regulations.

11. See Section 18980.1.1(Proposed).

12. See e.g., Oregon's Plastic Pollution and Recycling Modernization Act (SB-582B), and corresponding implementing regulations ORS 459A.863(6)(b)(J) and ORS 459A.869(13), which allow for an exclusion and exemption of industrial and B2B materials that do not undergo separation at a commingled processing facility; and are further used or recycled responsibly.

13. See e.g., supra n. 8.

___

authority that in many respects amounts to regulatory oversight and decision-making.14 For example, under the Proposed Regulations, PROs are able to design all elements of

the stewardship plan for EPR data collection, reporting, and fee assessments, as well as coordinate determinations of exempt materials and use of responsible end markets.15 While PROs are intended to serve as administrative entities supporting the State's implementation of SB 54, the Proposed Regulations risk shifting too much governmental and quasi-regulatory power to these private or non-governmental entities, without sufficient checks and balances or meaningful opportunities for producer input and review. Key concerns with the Proposed Regulations' approach include:

 PRO Obligations and Responsibilities Exceed Appropriate Delegation. Under CalRecycle's Proposed Regulations, the PRO is primarily responsible for reviewing producer compliance with EPR requirements, including the identification of material exemptions, evaluation of whether materials meet recyclability or compostability criteria, and approval of selected responsible end markets. This framework effectively positions the PRO to interpret and apply regulatory standards—functions that are fundamentally governmental in nature and more appropriately reserved for CalRecycle. Currently, there is no clearly defined process for producers to challenge or appeal a PRO's determination, nor is there an explicit role for CalRecycle to ensure that exemption evaluations are conducted fairly and consistently across all sectors.

 Restriction of Access to Exemption Processes for Independent Producers. The Proposed Regulations appear to allow only PROs, or, in limited cases, approved independent producers, to submit material exemption requests. This restriction effectively forces producers to rely on a PRO as the gatekeeper for regulatory relief, even where the PRO may have conflicting interests or where a minority of producers may have legitimate concerns not represented by the majority within the PRO. Such a system limits fair and equal access to administrative processes and introduces the risk that producer interests will be subordinated to internal PRO politics or majority rule.

 Lack of Accountability or Oversight Mechanisms for PROs. Perhaps most concerning, the Proposed Regulations do not establish meaningful accountability structures for PRO administration. Producers who are members of a PRO currently have no clearly defined process for raising grievances, challenging PRO decisions, or petitioning CalRecycle to intervene in cases of mismanagement, bias, or failure to meet statutory objectives. Nor is there a process by which minority producers—those whose voices may be marginalized within a PRO—can ensure their concerns are heard and addressed. Additionally, there is no clear regulatory pathway for the removal or replacement of a PRO that fails to meet its obligations or does not represent the interests of a sizable portion of its members. Given the scope of authority delegated to the PRO, this is a serious gap in governance and oversight that must be addressed.

To ensure alignment with the intent of SB 54 and uphold regulatory integrity, we respectfully urge CalRecycle to reconsider the extent of authority delegated to PROs. CalRecycle should retain final decision-making authority over all regulatory determinations, including exemption approvals and responsible end market designations. The regulations should be revised to allow all producers—regardless of PRO affiliation—to directly submit material exemption requests to CalRecycle.

Additionally, the PRO framework must include a clear and formal grievance and appeals process, enabling producers to challenge PRO decisions or raise concerns about PRO administration directly with CalRecycle. To promote effective, fair, and transparent administration, CalRecycle should establish robust accountability and transparency standards for PROs, including requirements for regular reporting, stakeholder engagement, and independent third-party audits.

Finally, CalRecycle's regulations should provide a mechanism for the agency to review and, if necessary,

___

14. See Section 18980.6(Proposed).

15. See id.

___

decertify or replace a PRO that fails to meet its obligations or does not fairly represent the interests of its members. By incorporating these accountability measures, CalRecycle can ensure that SB 54 is implemented in a manner that is fair, transparent, and consistent with the statute's objectives, without ceding undue regulatory authority to entities that lack direct public oversight.

V. Industrial Producers May Be Unprepared for Imminent Compliance Requirements

CalRecycle's Proposed Regulations impose highly accelerated compliance timelines for producer registration, reporting, and fee payments, some of which are triggered as soon as 30 days after the regulations take effect. While such urgency may be manageable for consumer-facing producers clearly anticipated to fall within the scope of SB 54, applying these same timelines to industrial and B2B packaging—much of which is not single-use—would create substantial and unintended compliance burdens.

As noted in earlier comments, including materials such as industrial shrink wrap, pallet wrap, protective shipping foams, and similar transport packaging within the definition of "covered material" would effectively bring entire sectors of industrial and commercial manufacturers into the SB 54 framework. These producers, who have operated under the reasonable understanding that their materials fall outside the scope of a law focused on consumer-facing, single-use packaging, would suddenly be subject to complex new obligations.

Under the proposed timelines, these newly affected producers would be expected to:

 Determine whether their materials fall under the newly defined scope of "covered material";
 Trace packaging components across complex, global supply chains;

 Establish systems for data collection, reporting, and EPR fee payment, despite having had little or no prior engagement with the SB 54 regulatory development process.

This abrupt shift, coupled with aggressive deadlines, creates a significant risk of confusion, noncompliance, and disproportionate economic impacts, particularly on sectors that were not part of stakeholder consultations and were never intended to be the focus of SB 54.

If CalRecycle elects to retain the current definitions of “covered material,” the producer hierarchy framework, and the associated processes for identifying regulated entities and packaging types, we strongly urge the Department to include a phased compliance schedule for non-single-use, industrial, and B2B packaging materials.

Such a phased approach would allow:

 Adequate time for affected producers to understand their obligations;
 The development of appropriate internal systems and supply chain coordination mechanisms;
 Better alignment with SB 54’s original intent and the practical realities of managing industrial packaging flows.

Incorporating a phased timeline would help mitigate unintended regulatory burdens while preserving the integrity and enforceability of SB 54’s core objectives.

VI. Conclusion and Recommendations

We appreciate CalRecycle’s efforts to implement SB 54 and share the State’s commitment to reducing plastic pollution and improving recycling systems. However, the Proposed Regulations, as currently drafted, significantly expand the scope of SB 54 beyond its intended focus on consumer-facing, single-use packaging. This overreach risks unintended compliance burdens on industrial and B2B manufacturers, disrupts existing circular systems, and delegates excessive regulatory authority to PROs without adequate oversight or accountability.

To ensure effective and equitable implementation, we respectfully urge CalRecycle to:

1. Revise definitions to clearly exclude industrial and B2B packaging from EPR requirements;
2. Align the definition of “consumer” with its plain meaning of an individual who purchases goods for personal, household, or non-commercial use;
3. Retain regulatory authority within CalRecycle, with direct access for all producers to request exemptions;
4. Establish transparent accountability mechanisms for PROs; and
5. Adopt a phased compliance schedule for newly affected materials.

We remain committed to supporting the successful implementation of SB 54 and believe these changes are necessary to preserve SB 54's integrity, prevent regulatory overreach, and support California's environmental goals without undermining responsible business operations. We welcome continued engagement on these matters through Advisory Board meetings, this public commenting period, or further direct discussions with CalRecycle.

Response to O-38-1

Regarding the assertion that the law should only apply to items "primarily encountered in the consumer context," CalRecycle rejects that interpretation because the statute expressly, repeatedly states otherwise. In particular, section 42041(s)(3) expressly incorporates "tertiary packaging intended to protect the product during transport," with no limitation that it only applies to the end users of the contents of the packaging. Moreover, as the commenter acknowledges, the definition of packaging expressly encompasses items used by the producer "for the user or consumer," not just consumers (section 42041(s) and (s)(1). Even more, there is no legal reason to limit the word "consumer" only to apply to natural persons and not businesses. Any time packaging is ultimately discarded by a business, that business was the consumer of that packaging; there can be no other "consumer" or "user" of that packaging. Lastly, the definition of "reusable"/"refillable"/"reuse"/"refill" obliterates the commenter's interpretation of "single-use": That definition establishes when packaging can be considered not "single-use" and unambiguously applies to packaging "reused or refilled by a producer," not just items reused or refilled by users or consumers. Therefore, packaging used or filled by a producer but not reused or refilled by them, as such action is defined in section 42041(af)(1), would necessarily be "single-use"; If the statute did not apply to such packaging, section 42041(af)(1) would have no relevance to what is single-use and therefore covered material. Given all these statutory provisions, the commenter's reading of statute is not plausible.

Sections II and III of the commenter's submission make essentially the same assertion: that the law does not cover packaging used in the "B2B" or industrial context. CalRecycle rejects that assertion for similar reasons. There is no logical reason why a business would not be neither the "consumer" nor the "user" of packaging that is consumed (i.e., used and discarded) by that business. Reading the statute otherwise would omit an enormous amount of packaging—essentially all shipping materials received by businesses—from the scope of the law.

CalRecycle also rejects the core assertion of section IV of the commenter's submission, that the regulations improperly delegate functions to a non-governmental entity. This section identifies no particular statutory provisions to support its assertions, instead offering conclusory statements about what is "appropriate." The comment does advance three proposals: allowing producers to directly submit exemption requests to CalRecycle, establishing a "grievance and appeals process" before CalRecycle, and providing a "mechanism for [CalRecycle] to decertify or replace a PRO that fails to meet its obligations or does not fairly represent the interests of its members."

CalRecycle rejects the first proposal because statute authorizes, but does not

require, CalRecycle to grant exemptions under PRC section 42060(a)(3) and (4). Rather than requiring a process for exempting producers, those provisions require CalRecycle to create a "process to identify covered material" for CalRecycle to consider exempting. Nowhere does statute state that the exemptions are to be specific to any producer, so there is no basis for the commenter's assertion that that producers have a right to request them, much less have any exemption personal to them; the "unique challenges" or health and safety reasons are those presented by materials themselves, not those that any certain person faces. Accordingly, for participant producers, creating a process that necessarily goes through their PRO is appropriate because the PRO is responsible for acting on producers' behalf to ensure fulfillment of statutory requirements. Notably, those requirements include achieving recycling rates for all plastic covered material, and plastic covered materials affect those rates regardless of whether they are exempt under PRC section 42060(a)(3) or (4), highlighting the importance of the PRO retaining discretion over which exemptions are consistent with, and will not prevent satisfaction of, statutory requirements Lastly, producers have the option to comply with their obligations and to request exemptions as Independent Producers.

CalRecycle rejects the second proposal because a grievance and appeals process would essentially create a tribunal, with CalRecycle as the decision maker. No provision in the statute suggests that the Legislature considered that to be CalRecycle's role, and assuming such a role would be the type of significant authority that a statute would typically expressly address, especially considering the enormous administrative burden that it would require. In contrast, two features of statute prove that the Legislature did not intend CalRecycle to be adjudicator of disputes between PROs and producers. First, section 42051.1(g)(2) requires producer responsibility plans themselves to establish the process for resolving disputes, and the proposed regulations impose strict requirements on that process. Second, sections 42080 through 42084 lay out CalRecycle's enforcement authority, with no mention of CalRecycle acting as an adjudicator in producer-PRO disputes. Rather, when there are violations of legal requirements underlying those disputes, CalRecycle's role is to investigate the violations and impose penalties pursuant to section 42080 and 42081.

The commenter also mentions that the regulations should establish "accountability and transparency standards for PROs," but statute and the proposed regulations do that at length. See, e.g., Pub. Resources Code sections 42051.3 (annual reports), 42054 (audits of PRO), and 42080 (authority of CalRecycle to conduct audits); proposed regulations sections 18980.4.2 (end market compliance audits and verifications), and 18980.6.5 (annual reports),

CalRecycle rejects the third proposal because statute and the proposed regulations unambiguously establish that CalRecycle has the authority to decertify a PRO, which would mean that producers would be under obligation to form a new one. See Pub. Resources Code sections 42051 (obligation to form PRO and participate in plan), 42056 (plan termination), and 42061.5(c) (revocation of PRO approval); and proposed regulation section 18980.8.2 (closure and transfer plans) and 18980.13.5 (disciplinary actions).

Lastly, CalRecycle rejects the proposal in section V: that the regulations incorporate a "phased timeline." The commenter seeks to "mitigate unintended regulatory burdens," but those burdens are not "unintended," and, in any event, the statute and proposed regulations already provide for phased compliance timelines when justified. See Pub. Resources Code 42060(a)(3) ("unique challenges" and phase-in plans) and 42081(b) (corrective action plans) and related sections of proposed regulations (18980.2.5 and 18980.13.1).

O-39: Association of Plastic Recyclers (APR) (Kate Bailey)

Comment O-39-1

PRIORITY 1: BUILD A SYSTEM THAT SUPPORTS NORTH AMERICAN RECYCLING INFRASTRUCTURE

APR's primary concern with the draft regulations is a lack of robust support for domestic and North American recycling infrastructure. SB 54 is about building a stronger, more transparent recycling system for California. This must include directly supporting recycling infrastructure both within California and North America, and ensure that the policy and incentives are not supporting investments in recycling infrastructure outside of North America.

In just the last month, California lost a major piece of in-state recycling infrastructure with the closure of rPlanet Earth, one of the five remaining PET reclaimers in the state and approximately 4% of the national capacity for recycling PET plastics. APR has stated that the rPlanet closure is a wake-up call for the urgent need for state and federal policies that support local recycling infrastructure by creating stronger manufacturing demand for companies to buy recycled plastics made from the materials collected by California's recycling programs.

California plastic reclaimers are struggling to stay in business as manufacturers import recycled plastic from overseas instead of buying from CA or North American businesses. Purchasing recycled content from overseas markets directly undermines investments in the US recycling system and is contrary to the goals of SB 54. California's program is meant to improve California's recycling programs, not subsidize recycling in Asia or other regions.

In-state and other North American reclaimers cannot compete with the lower price of material recycled in other countries where labor costs, energy costs, and environmental standards can be much lower. SB 54 will collect millions of additional pounds of recyclable plastics from California communities. If reclaimers cannot sell the recycled material back to manufacturers because they are being undercut by imports, they will close their businesses and California's circular economy will break down. Therefore, it is incumbent upon California to build a recycling system that supports a truly circular economy and invests in California and North American reclaimers.

This is not a hypothetical situation. In just two years, recycled PET (rPET) imports to the U.S. rose by over 65%, from 150,000 metric tons in 2022 to more than 250,000 metric tons in 2024. Imports from Asia now represent 44% of this volume, up from 20% in 2020. When California started the SB 54 regulations development, **California had six PET plastics reclaimers. Now there are only four.** The surge in imported plastics and overall weak market demand for recycled plastics strongly contributed to the closure of rPlanet Earth in Vernon, CA last month and shuttering of the PET wash and sort lines at Evergreen Recycling (Riverside, CA) in early 2025.

We cannot wait to address this issue. These regulations must support North American recyclers for SB 54 to be effective. To that end, we strongly recommend the following changes:

TEXT RECOMMENDATIONS

1. Apply the source reduction credit to recycled content produced only from North American sources.
The statute allows for the use of recycled content to apply toward a portion of the source reduction credit. This incentive should be limited to only recycled plastic produced from plastics collected within the US or North America in order to support recycling programs in these regions. Without this language, companies would be rewarded for buying recycled content from overseas markets which are undermining the viability of US and North American recycling operations. Because the recycled content credit is an optional program, not a mandate, it is our understanding that the state has legal authority to allow only North American sources without infringing upon global trade protections. Producers are intentional about the use of postconsumer recycled content and the percentage levels in their products and packaging. They will be able to work with their reclaimer suppliers and CAA to verify North American PCR sources given the lead time before full implementation of SB 54. Additionally, SB 54 requires third party certification of recycled content used toward the source reduction credit. While third party certification does not currently report on the use of North American sources, it can be leveraged to do so given the SB 54 program goals and lead time.

- **P. 67, add new (6):** How the formula will grant source reduction credit only for usage of postconsumer recycled content processed at North American reclamation facilities and generated from plastics collected from North American sources.

2. Direct PRO investments only in domestic or North American operations
The PRO is tasked with supporting the development, expansion, and continued operations of responsible end markets. To ensure the success of the EPR program in increasing statewide collection and recycling of materials, investments should be focused on domestic and North American recycling facilities to process recyclables collected from California programs.

- **P. 74 (a), add new (4):** Describe how the PRO will give preference to end markets in North America.
- **P. 79 (a)(1), add new (A):** Financial support shall only be given to US and North American end markets.
- **P. 97-98, (C):** "A PRO shall set base fee rates for covered material categories to account for investments or other expenditures necessary to develop North American-based responsible end markets for such covered material categories…"

Again, we emphasize that the aforementioned revisions **to support domestic recycling are the most impactful changes you can make to support California recyclers and foster a truly local circular economy.**

Response to O-39-1

Comment rejected. CalRecycle regulations cannot lawfully disfavor interstate or international commerce.

Comment O-39-2

PRIORITY TWO: AMEND DEFINITION OF DETACHABLE COMPONENTS TO ALIGN WITH DESIGN GUIDELINES TO INCREASE RECYCLING

APR is concerned that the definition of components, and how individual components could be categorized differently than their base packaging, will undermine plastic recycling rates and best practices in designing components to be recyclable with the base packaging (e.g. caps on bottles). Our concern is with this highlighted portion of the definition:

Section 18980.1. Definitions (a) (4) (B) "For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached."

APR has spent 30 years working with recyclers, producers, and the entire supply chain to design plastic packaging, including plastic packaging components, to be compatible with recycling processes. When components are designed to be recyclable and recycled, we can create a system where residents can simply put the entire plastic package into the recycling bin and the entire package--including attached plastic components--can be effectively sorted and recycled by MRFs and plastic reclaimers. **The current definition directly contradicts other sections of statute that require and incentivize the use of the APR Design® Guide for Plastics Recyclability.** The APR Design® Guide evaluates attached components as part of the base packaging. **Please see Appendix B for more discussion on this issue.**

Under the current definitions, if all plastic components are put in separate CMC and EPR fee categories from their base packaging, this will:

- Lower recycling rates
- Distort producer fees
- Create more consumer confusion
- Discourage proven design best practices

Here are common examples of plastic components that are routinely recycled by consumers as part of the base plastic packaging that should be categorized with their base packaging:

Plastic component types
Components not typically removed for consumer use

Plastic product examples
Shampoo bottle cap or pump Body lotion cap or pump Cleaner bottle sprayer Rigid container with hinged lid (e.g. salad box) Bucket handle Adhered label

Plastic component types
Components typically removed and re-attached for recycling

Plastic component types
Screw-on bottle caps Screw-on jar lids Screw-on detergent cap
It is critical that the SB 54 definition distinguishes between components that are recycled or disposed together with the base packaging from components that are detached and discarded separately.

We understand that this definition of component is primarily needed to quantify the number and types of plastic components to reach the source reduction goals. However, the goal to count all components should not undermine recycling efforts, and we believe there is a way for the state to set the definitions to both quantify the number of components and ensure components are effectively recyclable and recycled. APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging. This includes differentiating when the component is routinely removed by the consumer and routinely re-attached by the consumer prior to recycling. We believe related revisions are needed in the CMC Guidance documents and will submit this feedback through the separate comment process for that document.

TEXT RECOMMENDATIONS

- **P. 3, (B)** For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached unless the component is designed for recyclability as defined in PRC 42355.51.

- **P. 3, (C):** A “detachable component” is one that may be completely detached from all other components or material and is either of the following:
- (i) A component designed such that it ~~may be~~ is routinely detached by consumers or during or after collection without the use of tools, substances, or non-manual processes. A component shall not be considered designed to be detached merely because it may be detached from all other components or materials during processing.
- (ii) Typically or necessarily detached through ordinary usage by the consumer before being discarded, and is not routinely re-attached prior to disposal. ~~regardless of whether the component is discarded attached to the other components.~~
- **P. 3, add new (D):** Notwithstanding paragraph (B), a detachable component that is typically discarded while attached to the base packaging component, and that does not render the packaging non-recyclable pursuant to the design for recycling standards in PRC 42355.51 shall be considered in the same category as the components from which it was detached.
- **P. 60, (d):** Recycling rate shall be calculated for each covered material category, except as established in subdivisions (f) and (g).
- (1) For covered material components that are not detachable components, a single recycling rate shall be calculated for the covered material category applicable to the item comprising those components rather than calculating a recycling rate for each component.
- (2) For covered material components that are detachable components, a recycling rate shall be calculated using the covered material category applicable to each detachable component.

It is imperative that the regulations align with SB 343 definitions of recyclability and recognize the components that are designed for recyclability with the base packaging. The current definitions are directly in conflict with design guidance and will result in lower recycling rates and distorted producer fees.

Response to O-39-2

CalRecycle rejects this comment for the reasons stated in response to comment O-39-5.

Comment O-39-3

ADDITIONAL RECOMMENDATIONS

APR wishes to reiterate the following concerns with the regulations that we have submitted in previous comments. We strongly support the following text revisions that will improve plastics recycling and the implementation of SB 54. These are listed in order of urgency and impact upon the scalability of plastics recycling. Please see Appendix A for a chronological list of revisions:

Provide greater clarity on categorical exemptions for products under Section 18980.2(a)(2).

APR supports the concerns voiced by numerous stakeholders that these exemptions are overly broad, will be difficult to administer, and may substantially undermine the effective implementation of SB 54. APR recommends CalRecycle remove this language in favor of a more objective and specific exemption process.

Provide greater clarity on criteria to be designated recyclable.

For plastic products that are not yet recyclable at scale, there remains significant confusion on the steps necessary to be designated as recyclable. APR recommends several changes targeting how a producer can request a recyclability designation, how both curbside and alternative collection programs count toward recyclability criteria.

- **P. 47, add new (g):** A PRO or an independent producer may submit a request to CalRecycle requesting a recyclable designation pursuant to PRC 42355.51(d)(6). The request must include:
- (1) A justification for the designation that demonstrates that collection, sortation and availability of responsible end markets for the identified covered materials are advancing with a reasonable likelihood of satisfying any of the recyclable criteria pursuant to PRC 42355.51 within a time period specified within the request.
- (2) A description of specific investments and actions in an approved PRO Plan or pending Plan amendment that the PRO and member producers will take to ensure that designating the materials as recyclable will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging. Such steps may include, but not be limited to: t(i) A description of any recyclable marketing claims that are or will be used on the targeted covered materials, and how consumers will be informed about how to recycle them in their community.
- (ii) Specific investments and improvements in specific recycling system facilities and programs that will mitigate contamination and/or be used to demonstrate successful models.
- **P. 52 (f)(1), add to end**: For the purposes of applying this requirement to paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code, “program” means any type of collection and recycling program, including alternative collection and local jurisdiction collection.

Recognize physical recycling as distinct from chemical recycling

The November 2024 draft SB 54 regulations separated out both mechanical and physical technologies from chemical recycling technologies. APR recommends reinserting this distinction. Physical recycling should not be considered a form of chemical recycling because the physical recycling processes do not chemically alter the plastic polymers or break chemical bonds. Physical recycling processes maintain the

physical structure of the plastics, just like mechanical recycling. Leading organizations and US states are already grouping mechanical and physical technologies apart from chemical recycling technologies: 1) The US FDA groups recycling technologies into physical or chemical recycling when issues guidance on the use of recycled plastics in food-contact packaging; 2) Both the Oregon and Washington packaging EPR laws distinguish between physical and chemical recycling technologies.

- **P. 75, (d):** A PRO or Independent Producer shall identify in its plan any recycling technology that was not a type of mechanical or physical recycling technology in use within the United States ~~State~~ as of the effective date of this Act..."
- **P. 75 (d) (1) (A):** Mechanical and physical recycling technologies that were in use within the United States ~~State~~ as of the effective date of the Act do not produce significant amounts of hazardous waste for the purposes of the Act and this chapter.
- **P. 76, B (2):** "A facility's use of a technology that is not a mechanical or physical recycling technology ~~within the State~~ as of the effective date of this Act…"

Allow for mechanical and physical recycling technologies outside of California.

The viability of the mechanical or physical recycling technology is also not based upon whether the operations are physically located in California. The state should recognize technologies and responsible operations based on objective criteria rather than geographic location within California by amending this sentence:

- **P. 75, (d):** A PRO or Independent Producer shall identify in its plan any recycling technology that was not a type of mechanical or physical recycling technology in use within the United States ~~State~~ as of the effective date of this Act..."
- **P. 75 (d) (1) (A):** Mechanical and physical recycling technologies that were in use within the United States ~~State~~ as of the effective date of the Act do not produce significant amounts of hazardous waste for the purposes of the Act and this chapter.
- **P. 76, B (2):** "A facility's use of a technology that is not a mechanical or physical recycling technology ~~within the State~~ as of the effective date of this Act…"

Remove recycled materials from the definition of covered materials. This definition is concerning and could include recycled content produced from covered materials through the recycling process, such as the recycled plastic flake or pellet that is manufactured into new products, whether or not those new products would be covered properties based on their inherent characteristics.

- **P. 3 (5):** "Covered material" has the same definition as in subdivision (e) of section 42041 of the Public Resources Code ~~and encompasses materials that originated from covered material items. In the context of end-of-life handling~~

~~and processing, if a substance comprises both materials that are covered material because they originated from such items and materials from other origins, only the portions originating from covered material items shall be considered covered materials."~~

Include CRV materials within curbside collection programs in yield calculations. It is not practical to have plastic recyclers calculate CRV container recycling through a separate methodology when these materials are mixed into the curbside bales. It is critical for CalRecycle to clarify where CRV containers fit into yield calculations so recyclers are given credit for processing them.

- **P. 58-59, (2)(A) add to end:** "except for the proportion covered by the Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500))."

Contextualize PFAS testing: Recyclers do not have the technology to continuously monitor and test the presence of PFAS in every load of covered materials entering a facility. The credit for recycled content should clarify that recycled content should not contain PFAS added or used during the recycling process.

- **P. 67, (5):** "…contains no intentionally added perfluoroalkyl and polyfluoroalkyl substances used or added during the recycling process."

Clarify that recyclers are only required to recycle "incompatible materials" that are deemed be recyclable by CalRecycle. There is a substantial difference between what can be "technically" recycled compared to what can be economically and effectively recycled. We request clarification that only materials deemed by the state to be recyclable should be required to be further processed by the REMs by referencing the covered materials category list published pursuant to Public Resources Code (PRC) Section 42061(a)(1), (c), and (d):

- **P. 70, (3)(A):** "For incompatible materials listed under the Covered Materials list that can be further processed…"

Establish a process for a REM to challenge requirements to recycle incompatible materials. If the REM is required to recycle incompatible materials, this removes both the incentive for MRFs to produce cleaner bales with fewer incompatible materials and the incentive for packaging designers to use fewer incompatible materials, both of which are critical solutions to reaching the state's recycling goals and building a higher-performing recycling system. APR requests a process to exempt REMs from this blanket requirement based on costs and/or technical feasibility and still be considered a REM:

- **P. 70-71(3), add (C):** If the REM cannot process incompatible material based on costs, facility design, or technical barriers, the REM shall submit documentation of these challenges to the PRO. The PRO shall not exclude an entity from being considered a REM if the REM can reasonably and sufficiently demonstrate that it cannot recycle incompatible materials based on this documentation.

Clarify further recycling at another REM. Our interpretation is that this applies to other recyclable materials that are later processed by another REM, such that those materials are part of the yield rate for the second REM and not the first entity. If this is the intent, we suggest the addition of the word "another":

- **P. 71, (i):** "…excluding material sent to another REM for further processing."

Remove contaminants, moisture, and food/liquid residue from yield calculations

The calculation rate methodology should specifically address the amount of contaminants, moisture, and liquid/food residue in the incoming bales. The REM does not have control over the amount of contamination in the incoming bales, and SB54 does not place requirements on MRFs to reduce residue levels. Therefore, any materials that are not processable by the REM should not be counted toward yield loss:

- **P. 71 (i), add to end:** "The PRO may propose additional calculations to account for the inherent losses in the materials accepted, including contaminants, food and liquid moisture, and other residues, to more accurately reflect the yield of processable materials received at the REM."

Clarification of new language under definition of end market. The proposed rules add a new sentence to the definition of end market that could be interpreted to mean there is more than one end market entity. While we recognize the need to define the different types of businesses that may be an end market, we request that the law clearly identifies only one entity as the official measurement reporting point for end markets:

- **P. 72 (b):** "An end market is an entity that produces and sells or transfers recycled organic product or recycled content feedstock that meets the quality standards necessary to be used for the creation of new or reconstituted products. An entity that produces and uses such material in the creation of new or reconstituted products can also be an end market, but there shall not be more than one end market for any one material. An entity may be an end market for some materials and an intermediate supply chain entity for others…"~~"An entity that produces and uses such material in the creation of new or reconstituted products is also an end market."~~

Respect proprietary information for REMs similar to other businesses. REMs should be eligible for the same protection as other stakeholders regarding the safeguarding of their financial information and proprietary information about the recycling process in the auditing process.

- **P. 77, (b) add to end:** The REM may request that proprietary information and f inancial analysis in the compliance report is not made public.

Recognize the role of MRFs in ensuring success of REMs. The ability for processors and end markets to meet yield and other performance requirements is highly dependent on the quality of the incoming bales collected from recycling programs. It is critical to identify actions to improve yield based on incoming material quality through steps such as this:

- **P. 78, add new (6):** Recommendations from the REM and/or PRO on improvements to MRF quality or processing standards, and product design changes, that could improve the ability of the REM to improve yield and compliance.

Invest in both existing and new end markets. REM investments should not be limited to new markets—funding should also be available to existing REMs to improve operations that result in higher material yield or lower environmental impacts:

- **P. 79, (a)(1):** "Provide financial support to end markets as necessary to expand and develop responsible end markets and ensure that they continue to satisfy and/or exceed the standards specified in section 18980.4(a)..."
- **P. 79, (a) add (4):** The PRO or Independent Producer must evaluate and incentivize opportunities to facilitate the purchasing of recycled content from North American REMs through longer-term supply agreements that extend for one or more years.

End markets should be plural. The recycling system depends on having multiple processors and buyers to ensure a robust and competitive system. The regulations should recognize the goal of multiple end markets for covered materials:

- **P. 80 (b):** "If a PRO or an Independent Producer identifies a covered material that does not have ~~an~~ North American end markets, as described in section 18980.4(b), the following requirements apply:"
- **P. 80 (b)(1)(B):** "Evaluates both the financial and operational feasibility of collecting, transporting, processing, and recycling the covered material.
- **P. 80 (b)(1), add new (E):** "Evaluates at least two viable processors and at least two viable manufacturing uses for the covered materials within North America"

- **P. 80 (b)(1), add new (F):** "Evaluates the recovered and processed material to determine that there would be at least two manufacturers to consistently use the material in their products."

The producer of components should be the same as the producer of the base packaging. The definition of detachable components creates confusion on the responsible party for individual components. The producer responsible for the base packaging is the entity that makes the decisions about which components to include, such as which cap, sprayer, or carrier handle to put on the product. Therefore the responsible party for the components should not be separate from that of the base packaging–it should be considered all part of the packaging design.

- **P. 3, add new (E):** Manufacturers of "component" parts are not considered producers and responsibility for such items are the responsibility of the producer of the packaging in which the component part is affixed.

Renewable feedstocks should not be detrimental to plastics recycling. For example, paper labels are one of the biggest contaminants to plastics recycling. By promoting renewable resources without any consideration on the impacts of recycling, the state is creating a situation where recycling could become more costly, or, worse, these feedstocks could render packaging non-recyclable.

- **P. 100, add to end of (j):** "so long as the renewable resource does not interfere with, or is not detrimental to, the recycling of the plastic covered material per the design guide referenced in subparagraph (A) of paragraph (3) of subdivision (d) of section 42355.51(d)(3)(A) of the Public Resources Code."

Allow for interim plan revisions based on updates to the design guide. The APR Design® Guide for Plastics Recyclability is a dynamic guide with updates incorporated to reflect changing packaging design and recycling operations. Consider additional language to allow for updated revisions to be submitted between the Program Plans such as:

- **P. 120, (B) add:** Updates to the Guide that would affect the recyclability of covered materials should be submitted when relevant between plans with an explanation of the changes and impacts.

Local jurisdictions' responsibility related to REMs: The PRO is responsible for establishing the availability of responsible end markets. However, local jurisdictions and recycling service providers do hold some responsibility for ensuring that their bales meet the quality specifications of those REMs. The phrase "absence of responsible end markets" implies that any problems are solely based on the availability of markets,

rather than the possibility that the problem is too much contamination in the bales that would render the materials not acceptable by a REM. Excess contamination should not be deemed a reason to exclude those materials from a local collection program when there are REMs that process materials from other jurisdictions with higher quality standards:

- **P. 141, (b) add: (1):** Excessive contamination or other bale conditions that render the material unacceptable by markets that exist for and would otherwise accept such material are not allowable reasons for determining the lack of insufficient end markets.

Provide further guidance on producer hierarchy for plastic food service ware. The distribution network for food service ware is significantly different from that of other covered materials under SB 54 and requires further clarification on which party is the obligated producer. This is an active area of concern in the implementation of Oregon's packaging EPR program. APR supports requests from plastic food service ware providers for revisions and/or additional guidance documents to streamline compliance.

Moving Forward

APR recognizes the need to move forward with SB 54 implementation given the pending timelines. **We strongly encourage CalRecycle to commit to future rulemaking processes to address these and other critical stakeholder issues. In addition, we request CalRecycle provide adequate flexibility to CAA in its initial Program Plan in areas where there remains substantial challenges with the regulations**.

APR staff and members are available at your convenience to discuss these comments, share further information, and collaborate on solutions for the effective implementation of SB 54. Please contact Kate Bailey, Chief Policy Officer, at katebailey@plasticsrecycling.org.

Response to O-39-3

CalRecycle partially accepts and partially rejects the commenter's suggestions. Regarding section 18980.2(a)(2), CalRecycle rejects the proposal to remove and replace it entirely but otherwise accepts the comment and has significantly revised section 18980.2(a)(2), by adding clearer, objective criteria and more specific procedural details to ensure that the exclusion is applied properly and efficiently. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Regarding the request for "greater clarity on criteria to be designated recyclable," CalRecycle rejects the commenter's suggested edits. Having CalRecycle issue recyclability designations upon request is not practicable; it would likely require CalRecycle to process many thousands of such requests, each of which would necessarily be complex under the requirements proposed, which would call for identification of responsible end markets and "reasonable likelihood" of them satisfying recyclability criteria under section 42355.51 within some requested timeframe. Besides establishing a vague timeframe requirement—no limitation is proposed on what period might be specified within the request—the proposed requirement would be contrary to law. To be recyclable, covered material must satisfy the requirements under section 42355.51(d) as they exist currently, not at some future date. Moreover, the overall approach advanced by the commenter would serve the same purpose as corrective action plans, a process that CalRecycle will administer as part of its enforcement activities. Under corrective action plans, producers of covered material that currently cannot meet statutory requirements may be afforded time to remedy such violations.

Regarding the suggested change to 18980.3(f)(1), CalRecycle declines to add the suggested language because the language would add no clarity. In context, it is clear that "program" may include any type of collection program.

Regarding physical recycling, CalRecycle declines to make the suggested changes to section 189804.1(d). Notably, the commenter offers no explanation based on the generation of hazardous waste, despite the express purpose of the relevant statutory provision (Pub. Resources Code section 42041(aa)(5)) being the avoidance of significant amounts of such waste. Furthermore, the commenter's suggestion to base the evaluation of technologies on the usage of technologies outside the state of California would be illogical because California does not set the policies of other states, so such usage may not be consistent with the considerations embodied in SB 54 and other state laws concerning recycling, disposal, and hazardous wastes. See, also, CalRecycle's response to comment B-11-8.

Regarding the proposed deletion from section 18980.1(a)(5), CalRecycle rejects that suggestion. The statute consistently uses the term "covered material" to refer to single-use packaging and plastic single-use food service ware both before and after it enters the waste stream or is processed. Also, without explanation, the commenter also uses the phrase "covered properties" a phrase not used anywhere in statute. The commenter's objection to the scope of the term "covered material," as interpreted in the regulatory text, is therefore not sufficiently clear to further respond to.

Regarding the proposed addition to 18980.3.2(b)(2)(A), CalRecycle rejects that suggestion because statute (Pub. Resources Code 42041(e)(2)(E)) unambiguously states that "beverage containers" (to which CalRecycle understands the commenter refers as "CRV materials") are not covered material.

The commenter's suggestion would, in effect, impermissibly consider beverage containers "covered material."

Regarding the proposed addition to section 18980.3.4(b)(5), CalRecycle rejects that suggestion because the provision at issue would not require recyclers to continuously monitor and test for the presence of PFAS. That provision only requires there to be a description of how an alternative compliance formula, if any, is incorporated into a producer responsibility plan. Statute expressly requires there to be no PFAS in postconsumer recycled content underlying any alternative compliance formula, with no distinction concerning when or how PFAS was incorporated into the material.

Regarding the proposed addition to 18980.4(a)(3)(A), CalRecycle rejects that suggestion because it is unnecessary. The provision immediately following that (18980.4(a)(3)(B)) accounts for incompatible materials that cannot be recycled. There is no absolute requirement that all incompatible materials must be further processed.

Regarding the proposed addition to 18980.4(a)(3)(C), CalRecycle rejects that suggestion for the same reasons as stated with respect to the proposed change to 18980.4(a)(3)(A). An end market does not need to be able to recycle incompatible materials. It only needs to send materials that can be processed and recycled to entities that can do so. Otherwise, incompatible materials may be disposed of responsibly.

Regarding the proposed change within the currently proposed section18980.4(a)(4)(i), CalRecycle rejects that suggestion because it would not change the meaning of the provision. It is grammatically clear that "not sent to a responsible end market for further processing" (indefinite article) refers to an end market other than "the end market" (definite article).

Regarding the proposed addition to 18980.4(b)(4)(i), CalRecycle rejects that suggestion. The proposed regulations already permit calculations to account for any material, such as contaminants, food, and moisture, that are not the covered material being assessed. If materials such as contaminants, food, and moisture are not part of the material being processed, then it would not be within the amount of "material" used in the denominator of the calculation.

Regarding the proposed change to 18980.4(b), CalRecycle rejects that suggestion because it would add no clarity to the proposed regulation. An end market is, by definition, the point in the supply chain where recycling is completed, so it is axiomatic that once material reaches its end market, there is no other end market. If that were not the case, the regulation makes clear that the entity would be an intermediate supply chain with respect to that material.

Regarding the proposed addition to 118980.4.2(b), CalRecycle rejects that

suggestion because the proposed regulations do not otherwise restrict responsible end markets from requesting that proprietary information and analyses not be made public. Section 18980.14 addresses confidentiality of any records submitted to CalRecycle.

Regarding the proposed addition of (6) to 18980.4.2(c), CalRecycle rejects that suggestion because subdivision (c) is a non-exhaustive list of the documentation annual reports must contain concerning verification that end markets satisfy the requirements to be considered responsible end markets. The commenter's suggestion is not relevant to such verifications.

Regarding the proposed changes to section 18980.4.3(a), CalRecycle rejects the suggested additions in (a)(1) because they are redundant with the proposed regulation. CalRecycle rejects the addition of (a)(4) because it would be unlawful for CalRecycle regulations to impose different restrictions or requirements on commercial activity based on whether it involves foreign or domestic partners.

Regarding the recommended change to section 18980.4.3(b) and the addition of (b)(1)(E), CalRecycle rejects the suggestion change because CalRecycle regulations cannot impose different restrictions based on whether business is conducted with foreign versus domestic partners. Also, changing the sentence so it uses the phrase "end markets" does not change the sentence's meaning. Likewise, the suggested change to (b)(1)(B) would add words that add no substance; "feasibility" already encompasses the concepts of "financial" feasibility and "operational" feasibility. Regarding the addition of (b)(1)(F), that addition is rejected because it is nonsensical to say that an evaluation would be "to determine that there would be at least two manufacturers to consistently use the materials in their products." Whether that circumstance exists would naturally fall within the evaluations described in the preceding subparagraphs.

Regarding the proposed addition to 18980.1(a)(4), no change is appropriate because there is no ambiguity over whether a person might be a "producer" merely because they manufactured a packaging component. Nothing in the proposed regulations or Public Resources Code section 42041(w) or other statutory section states otherwise.

Regarding the proposed subsection (j) for section 18980.4, no change is appropriate because statute expressly requires that "[p]lastic covered materials derived from renewable materials shall be subject to a reduced fee" (Pub. Resources Code section 42053(e)(7)). Also, Public Resources Code 42053)(e)(2) already unambiguously requires the fee structure to account for materials that are detrimental to recycling.

Regarding the proposed addition to subsection (B) of section 18980.8(j)(2), [AB116.1]CalRecycle rejects that suggestion because it would directly contradict the text that would precede it. A producer responsibility plan must stand on its

own, and the statute requires it to be approved by CalRecycle. (E.g., Pub. Resources Code section 42051(b)). Only CalRecycle, not private parties such as the commenter, can approve of changes to a plan; therefore, the Design Guide that a plan incorporates must follow the requirements for plan updates and amendments.

Regarding 18980.11(b), CalRecycle rejects the proposed addition because it is unnecessary. Because the question under Public Resources Code 42060.6 is one of practicability, it already accounts for the commenter's concerns. Practicability logically must be prospective: If it is practicable to provide material in bales that satisfy end market requirements, then the outcome would be the one desired by the commenter. The existence of contamination or other bale conditions that render material unacceptable would not retroactively affect that practicability; rather, it would mean that the local jurisdiction or recycling service provider's actions failed to achieve what was reasonably possible.

Regarding "guidance on producer hierarchy for plastic food service ware," the commenter only vaguely refers to "requests from plastic food service ware providers." The commenter neither submits its own suggested revisions nor explains what it would consider "further clarification." Also, no regulation is necessary for CalRecycle to provide "guidance documents" that demonstrate application of the ultimately adopted regulations.

Comment O-39-4

APPENDIX A: LIST OF ALL TEXT REVISIONS PROPOSED ABOVE

- **P. 3, (B)** For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached unless the component is designed for recyclability as defined in PRC 42355.51.
- **P. 3, (C):** A “detachable component” is one that may be completely detached from all other components or material and is either of the following:
- (i) A component designed such that it ~~may be~~ is routinely detached by consumers or during or after collection without the use of tools, substances, or non-manual processes. A component shall not be considered designed to be detached merely because it may be detached from all other components or materials during processing.
- (ii) Typically or necessarily detached through ordinary usage by the consumer before being discarded, and is not routinely re-attached prior to disposal. ~~regardless of whether the component is discarded attached to the other components.~~
- **P. 3, add new (E):** Manufacturers of “component” parts are not considered producers and responsibility for such items are the responsibility of the producer of the packaging in which the component part is affixed.

- **P. 3 (5):** “Covered material” has the same definition as in subdivision (e) of section 42041 of the Public Resources Code ~~and encompasses materials that originated from covered material items. In the context of end-of-life handling and processing, if a substance comprises both materials that are covered material because they originated from such items and materials from other origins, only the portions originating from covered material items shall be considered covered materials.”~~
- **P. 47, add new (g):** A PRO or an independent producer may submit a request to CalRecycle requesting a recyclable designation pursuant to PRC 42355.51(d)(6). The request must include:
- (1) A justification for the designation that demonstrates that collection, sortation and availability of responsible end markets for the identified covered materials are advancing with a reasonable likelihood of satisfying any of the recyclable criteria pursuant to PRC 42355.51 within a time period specified within the request.
- (2) A description of specific investments and actions in an approved PRO Plan or pending Plan amendment that the PRO and member producers will take to ensure that designating the materials as recyclable will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging. Such steps may include, but not be limited to:
- (i) A description of any recyclable marketing claims that are or will be used on the targeted covered materials, and how consumers will be informed about how to recycle them in their community.
- (ii) Specific investments and improvements in specific recycling system facilities and programs that will mitigate contamination and/or be used to demonstrate successful models.
- **P. 52 (f)(1), add to end:** For the purposes of applying this requirement to paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code, “program” means any type of collection and recycling program, including alternative collection and local jurisdiction collection.
- **P. 58-59, (2)(A) add to end:** “except for the proportion covered by the Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).”
- **P. 60, (d):** Recycling rate shall be calculated for each covered material category, except as established in subdivisions (f) and (g).
- (1) For covered material components that are not detachable components, a single recycling rate shall be calculated for the covered material category applicable to the item comprising those components rather than calculating a recycling rate for each component.
- (2) For covered material components that are detachable components, a recycling rate shall be calculated using the covered material category applicable to each detachable component.
- **P. 67, (5):** “…contains no intentionally added perfluoroalkyl and polyfluoroalkyl substances used or added during the recycling process.”
- **P. 67, add new (6):** How the formula will grant source reduction credit only for usage of postconsumer recycled content processed at North American

reclamation facilities and generated from plastics collected from North American sources.

- **P. 70, (3)(A):** "For incompatible materials listed under the Covered Materials list that can be further processed…"
- **P. 70-71(3), add (C):** If the REM cannot process incompatible material based on costs, facility design, or technical barriers, the REM shall submit documentation of these challenges to the PRO. The PRO shall not exclude an entity from being considered a REM if the REM can reasonably and sufficiently demonstrate that it cannot recycle incompatible materials based on this documentation.
- **P. 71, (i):** "…excluding material sent to another REM for further processing."
- **P. 71 (i), add to end:** "The PRO may propose additional calculations to account for the inherent losses in the materials accepted, including contaminants, food and liquid moisture, and other residues, to more accurately reflect the yield of processable materials received at the REM."
- **P. 72 (b):** "An end market is an entity that produces and sells or transfers recycled organic product or recycled content feedstock that meets the quality standards necessary to be used for the creation of new or reconstituted products. An entity that produces and uses such material in the creation of new or reconstituted products can also be an end market, but there shall not be more than one end market for any one material. An entity may be an end market for some materials and an intermediate supply chain entity for others…"~~"An entity that produces and uses such material in the creation of new or reconstituted products is also an end market."~~
- **P. 74 (a), add new (4):** Describe how the PRO will give preference to end markets in North America.
- **P. 75, (d):** A PRO or Independent Producer shall identify in its plan any recycling technology that was not a type of mechanical or physical recycling technology in use within the United States ~~State~~ as of the effective date of this Act..."
- **P. 75 (d) (1) (A):** Mechanical and physical recycling technologies that were in use within the United States ~~State~~ as of the effective date of the Act do not produce significant amounts of hazardous waste for the purposes of the Act and this chapter.
- **P. 76, B (2):** "A facility's use of a technology that is not a mechanical or physical recycling technology ~~within the State~~ as of the effective date of this Act…"
- **P. 75, (d):** A PRO or Independent Producer shall identify in its plan any recycling technology that was not a type of mechanical or physical recycling technology in use within the United States ~~State~~ as of the effective date of this Act..."
- **P. 75 (d) (1) (A):** Mechanical and physical recycling technologies that were in use within the United States ~~State~~ as of the effective date of the Act do not produce significant amounts of hazardous waste for the purposes of the Act and this chapter.
- **P. 76, B (2):** "A facility's use of a technology that is not a mechanical or physical recycling technology ~~within the State~~ as of the effective date of this Act…"
- **P. 77, (b) add to end:** The REM may request that proprietary information and financial analysis in the compliance report is not made public.

- **P. 78, add new (6):** Recommendations from the REM and/or PRO on improvements to MRF quality or processing standards, and product design changes, that could improve the ability of the REM to improve yield and compliance.
- **P. 79, (a)(1):** "Provide financial support to end markets as necessary to expand and develop responsible end markets and ensure that they continue to satisfy and/or exceed the standards specified in section 18980.4(a)..."
- **P. 79, (a) add (4):** The PRO or Independent Producer must evaluate and incentivize opportunities to facilitate the purchasing of recycled content from North American REMs through longer-term supply agreements that extend for one or more years.
- **P. 79 (a)(1), add new (A):** Financial support shall only be given to US and North American end markets.
- **P. 80 (b):** "If a PRO or an Independent Producer identifies a covered material that does not have ~~an~~ North American end markets, as described in section 18980.4(b), the following requirements apply:"
- **P. 80 (b)(1)(B):** "Evaluates both the financial and operational feasibility of collecting, transporting, processing, and recycling the covered material.
- **P. 80 (b)(1), add new (E):** "Evaluates at least two viable processors and at least two viable manufacturing uses for the covered materials within North America"
- **P. 80 (b)(1), add new (F):** "Evaluates the recovered and processed material to determine that there would be at least two manufacturers to consistently use the material in their products."
- **P. 97-98, (C):** "A PRO shall set base fee rates for covered material categories to account for investments or other expenditures necessary to develop North American-based responsible end markets for such covered material categories…"
- **P. 100, add to end of (j):** "so long as the renewable resource does not interfere with, or is not detrimental to, the recycling of the plastic covered material per the design guide referenced in subparagraph (A) of paragraph (3) of subdivision (d) of section 42355.51(d)(3)(A) of the Public Resources Code."
- **P. 120, (B) add:** Updates to the Guide that would affect the recyclability of covered materials should be submitted when relevant between plans with an explanation of the changes and impacts.
- **P. 141, (b) add:** (1): Excessive contamination or other bale conditions that render the material unacceptable by markets that exist for and would otherwise accept such material are not allowable reasons for determining the lack of insufficient end markets.

Response to O-39-4

Comment rejected. This portion of the commenter's submission reiterates the proposals set forth in earlier portions of the submission. CalRecycle has addressed each proposal in response to those earlier portions.

Comment O-39-5

APPENDIX B: APR DISCUSSION BRIEF

HOW PLASTIC COMPONENTS ARE RECYCLED WITH PLASTIC PACKAGING & REQUESTED CHANGES TO SB 54 DETACHABLE COMPONENT DEFINITION

The Association of Plastic Recyclers (APR) represents over 80% of the processing capacity for post-consumer plastic packaging in North America. Our members include the businesses that recycle most of the PET, HDPE, LDPE, and PP plastic packaging after it has been collected by California's curbside and CRV recycling programs. This includes five California-based processors (reclaimers) of post-consumer recycled plastics, as well as dozens of California-based businesses throughout the value chain of plastics recycling.

APR has spent 30 years working with recyclers, producers, and the entire supply chain to design plastic packaging, including plastic packaging components, to be compatible with recycling processes. When components are designed to be recyclable and recycled, we can create a system where residents can simply put the entire plastic package into the recycling bin and the entire package--including attached plastic components--can be effectively sorted and recycled by MRFs and plastic reclaimers.

As the voice of plastic recyclers, APR is focused on how the SB 54 requirements can effectively and efficiently drive higher recycling rates for plastic packaging to reduce plastic pollution. Unfortunately, APR is deeply concerned that the proposed definition of detachable components under the SB 54 revised rules (released August 2025) will treat all components as distinct parts, and not as part of the base packaging. This will lead to lower recycling rates. **APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging.** This includes differentiating when the component is routinely removed by the consumer and routinely re-attached by the consumer prior to recycling.

PROBLEM: If all plastic components are put in separate EPR fee categories than the base plastic packaging, this will • Conflict with design standards and best practices • Lower recycling rates • Distort the producer fees • Create more consumer confusion • Promote poor design choices

Examples of plastic components on plastic packaging

The following table identifies common examples of how plastic components are used by consumers and how the consumer may recycle these components. The components in the green rows are commonly recycled today as part of the base packaging. In other cases, components are more likely to be recycled separately from the base packaging. There are still some cases in which it is unclear if there is sufficient data to know how consumers are recycling these components.

Examples of plastic components on plastic packaging and how they are commonly recycled by the consumer*

Plastic component types Plastic product examples Typical recycling pathway Components not typically removed for use Shampoo bottle cap or pump Body lotion cap or pump Cleaner bottle sprayer Rigid container with hinged lid (e.g. salad box) Bucket handle Adhered label Recycled with original packaging Components typically removed and re-attached for recycling Screw-on bottle caps Screw-on jar lids Screw-on detergent cap Recycled with original packaging Components typically removed entirely from package and not reattached Tear-away pouch top Yogurt foil lid Recycled separately Components that may be removed and may be re-attached Snap-on lids Non-screw on dispenser cup To-go cup lids More data needed on consumer behavior and MRF sorting

** Please note these examples only apply to plastic packaging with plastic components. This is not reflective of plastic components used on non-plastic packaging such as straws attached to drink cartons.*

The above examples illustrate that there are many common plastic packaging components that are recycled today along with the base packaging. It is critical that the Covered Material Categories reflect how consumers are actually recycling the products. This is why the definition of detachable components must differentiate when components are attached or re-attached by the consumer for recycling.

CONCERN 1: CONTRADICTS BEST PRACTICES OF DESIGNING COMPONENTS TO BE RECYCLABLE WITH ENTIRE PACKAGE

Plastic components can and should be designed to be recyclable when attached or reattached to the base packaging. CalRecycle already recognizes the importance of product design for plastic packaging in SB 54. Further, SB 343 (Allen, Chapter 507, Statues of 2021) specifically references the APR Design® Guide as the tool to address how components affect the recyclability of plastic products:

PRC 42355.51: *"(3)A product or packaging shall not be considered recyclable in the state unless the product or packaging meets all of the following criteria, as applicable: (A) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers…"*

Statute requires producers to be compliant with the APR Design® Guide because the Design® Guide evaluates components as part of the entire packaging. See the diagram below to demonstrate how the APR Design® Guide assesses all the product design features including components, inks, colors, sizes, additives, and more. This means it would be contradictory for CalRecycle to use the current definition of detachable components because it would classify all components as distinct parts when best

practices look at these components as part of the base packaging. **This current definition is at odds with the leading design standards already recognized in California law.** The definition of detachable component must recognize that some components are successfully recyclable and recycled as part of the base packaging.

Figure 1: APR Whole Package Assessment includes product components

CONCERN 2: LOWERS RECYCLING RATES

In addition to the examples in the chart on page two, here are two common ways plastic components can be effectively recycled as part of the plastic product when properly designed for recyclability.

Example 1: Caps on plastic bottles. APR's model bale specs have endorsed caps on bottles since 2011. APR Design standards ensure that the caps can either be separated from bottles during the recycling process and recovered for recycling (e.g., caps on PET bottles), or are sufficiently compatible with the main bottle packaging (e.g., caps on HDPE bottles). Please see more information on caps in the plastics recycling process here.

Data shows that California consumers are in fact putting caps back on the bottles. In 2025, the PET Recycling Corporation of California (PRCC) conducted a bale sort that found that over 78% of bottles collected through the CRV program had the cap attached, and 57% of bottles processed at MRFs had caps on bottles prior to baling.

Example 2: Design-compatible pumps and sprayers. Pumps and sprayers often contain a small metal spring that is very problematic to sort out during the plastic recycling process. APR's Design Guide recommends plastic-only pumps and sprays, and there are over 60 variations of APR approved designs for sprayers and pumps that a company can use to ensure the entire container and pump/sprayer are fully recyclable. Proper design eliminates the need for the consumer to remove any pump or sprayer, and instead, allows the consumer to simply put the entire container in the recycling bin. Plastic recyclers can then fully recycle the container and pump, leading to higher recycling rates.

CONCERN 3: DISTORTS EPR FEES

The statute requires the PRO to set fees that reflect the *"Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material…."* This means producer fees, as based on the Covered Material Categories (CMCs), are required to reflect the actual costs of recycling and should reflect how plastic components are currently managed. For example, plastic caps on PET plastic bottles are collected and recycled today as part of the PET bottles. The costs collect and sort PET bottles are based on recycling all of the components together as a single unit. Similarly, the plastic reclaimers' costs to recycle a bale of PET bottles

include the routine operational steps of separating the caps for recycling, along with any other non-PET “floatable” material.

To base the EPR fees on the actual costs, the PRO must consider how products are actually recycled, which means differentiating between components that are attached or re-attached for recycling. **Treating attached and re-attached components as part of the entire packaging unit is the most accurate reflection of the actual recycling costs of managing these components based on how they are recycled today.**

CONCERN 4: INCREASES CONSUMER CONFUSION

When all the attached or re-attached plastic components are designed to be recyclable with the product, recycling is easier for California residents. One of the overarching principles of SB 54 is to streamline, standardize, and simplify plastics recycling for residents to increase participation. This means **moving toward a future where there is less onus on the resident to intentionally remove any plastic components prior to recycling.** The role of the resident is to simply put the plastic package into the recycling bin, and then, with proper packaging design, the full product can be effectively recycled into new products.

If components are all considered separately, then it may lead to more cases of when the resident is instructed to remove parts for recycling. This moves in a contrary direction to the statute goals. Components that are already recyclable when attached or re-attached should be incentivized, not treated the same as components that must be removed and recycled or disposed separately. There are too many nuances around how components are handled by consumers and how they flow in the recycling to simply set one baseline for all materials. A**PR strongly recommends CalRecycle differentiate between component types in its definition and CMC guidance and incentivize those that can be recycled as part of the base package.**

CONCERN 5: PROMOTES POOR DESIGN CHOICES

APR anticipates several significant problems caused by charging EPR fees based on separate components with two examples provided here:

Scenario 1: Counting separate components may result in larger lids that use more plastic
If a producer must consider the screw-on lid as a separate and distinct component, then the producer may need to design the lid to be recycled separately from the container. Since smaller format plastics are more challenging to recycle, the producer would be incentivized to make the lid larger so it could be more effectively sorted by the MRFs. For example, a plastic jar lid (e.g., peanut butter jar) could be expanded to 3” or 4” width, or increased in height to 3” or more, to increase recyclability as a standalone component. This change in lid size will increase the amount of plastic being used in product design, which is contrary to the statutory goals.

Scenario 2: Moving to metal caps will result in less recycling.
If the plastic cap is considered a separate category and has a different fee than the plastic container, then producers will look for ways to reduce their fees on the cap itself. Because metal typically has lower EPR fees than plastics, producers would have a financial incentive to move toward metal caps. While this might *sound* like a good way to reduce the number of plastic components, it has many unintended consequences. Metal components are the number one contaminant on PET containers. Small pieces of metal are extremely problematic in the plastic recycling system because they are extremely challenging to separate and degrade the quality of the recycled content. If more companies move to metal caps, it will have several negative impacts, including less recycled plastic and lower quality of recycled content. In addition, small metal caps are challenging to recycle because of their size and because they contain a plastic lining on the inside of the cap. By contrast, plastic caps are recyclable today on bottles. Moving toward more plastic-lined metal caps would be a huge step backward and would create more problems rather than solve problems.

Moving forward

APR recognizes that one of the goals of SB 54 is to reduce plastic waste from small components, and the subsequent need to quantify the number and types of plastic components. However, the goal to count all components should not undermine recycling efforts, and we believe there is a way for the state to set the definitions to both quantify the number of components and ensure components are effectively recyclable and recycled.

APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging.

Response to O-39-5

Comment rejected. CalRecycle declines to adopt the suggested change because it is vague: The suggestion does not explain what change would "recognize that some plastic components are best recycled as part of the base packaging." Moreover, such a change wouldn't describe an inherent characteristic of components because whether components are present in the configuration in which they are "best recycled" depends on consumer behavior and whether and how they have been processed. By not describing an inherent characteristic that can be ascertained, the definition suggested highlights, but does not solve, that problem. The proposed text avoids that problem and provides a definition that can be applied to products as they are encountered before they are discarded and without regard to consumer compliance with the handling desired by producers, clarifying that "detachable component" does not encompass components designed to be removed during the recycling process rather than by consumers. This addresses the issue raised by the commenter; components that are successfully designed to remain attached until the recycling process are not considered "detachable," while those that are likely to become detached are

"detachable." Further clarification in (a)(4)(D) explains that a component that may intentionally be detached during recycling is not necessarily "detachable."

O-40: National Wooden Pallet and Container Association (Jason Ortega)

Comment O-40-1

The National Wooden Pallet and Container Association (NWPCA) appreciates the opportunity to submit comments on the rulemaking for California Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).

Wooden pallets are not "covered material" under a plain reading of SB 54. NWPCA respectfully requests that CalRecycle acknowledge and state that SB 54 does not apply to wooden pallet producers or users.

NWPCA & THE INDUSTRY

NWPCA is the only global wood pallet trade association, representing more than 450 companies in the United States and another 400 globally. The US wood pallet sector is a relatively small but critical industry comprised of over 3,4001 predominantly small- and medium-sized businesses spread across every state. This network of companies ensures the supply chain has the pallets needed to move essential goods throughout the country. Any disruption or unnecessary burden will simply hurt family-owned businesses and translate to higher costs to the consumer. All without cause, as pallets already have the highest documented recovery, reuse, and recycle rate of any packaging product in the supply chain (95%)2 when compared to other published numbers.3

EVIDENCE

Wooden pallets are not a "covered material" as defined in SB 54. The legislation defines "covered material" as "single-use packaging," i.e., "packaging that is routinely [discarded] after its contents have been used" which is "typically not [reused]." PRC § 42041(e)(1). Both by design and in practice, wooden pallets are not single-use.

A third-party verified study found that, depending on design and use, they are reused between ten (10) and sixty-six (66) times in a lifecycle. 4

Comprehensive, peer-reviewed wooden pallet studies recently found:

- Over ninety-five percent (95%+) of wooden pallets are recycled, repaired, remanufactured, chipped, used as animal bedding, fuel, etc., and sold—not landfilled5
- The reuse market is robust, accounting for over forty percent (40%+) of the industry.6
- A quarter of companies' sales dollars come from reused pallets.7

- Pallet remanufacturers landfill less than one percent (<1%) of their pallets.8

Simply put, all the best available evidence demonstrates that wooden pallets are designed for multiple uses and are, in fact, repeatedly re-used across industries. Wooden pallets are categorically not single-use. SB 54 does not apply.

INDUSTRY, EXPLAINED

The data shows that the US pallet sector is a model in circularity, driven by the inherent value of reusable lumber, the repairability of wooden pallets, and the customization the industry can provide its customers. This value has already created an incentive for manufacturers and end-users to reuse and recycle at rates far above the rates set forth in any policy, including SB 54. Companies that have excess pallets after receiving goods want to avoid the cost of landfill disposal and recover some value, and pallet remanufacturers need used pallets to repair and re-sell. These two parties are driven to engage for mutual benefit.

Wooden pallets are not a burden on the waste system. As a sustainable, circular choice for packaging that is not a burden on waste management, it is clear that the wooden pallet industry is not the intended target of this legislation. As explained by the bill's sponsor, the legislation "creates the California Plastic Pollution Mitigation Fund, which will dedicate $500 million per year for the next decade – paid for by industry – to fund the monitoring and mitigation of plastics pollution."9 CalRecycle explains that the purpose of the fines are to "address the environmental impacts of plastic pollution and aid affected environmental justice communities most impacted by the damaging effects of single-use plastic waste."10 Wooden pallets are inherently different from single-use plastic this legislation deems as the issue.

Wooden pallets are designed for reuse and easy recycling. They're composed of 98.5% wood, and the remaining 1.5% is fasteners (nails, staples, bolts), which are also recovered and recycled. Only about 1% of pallets are chemically treated.11 Additionally, the paint used in the industry is a water-based pigment and thus the product is still 100% recyclable if applied.12 This makes it easy for the industry to recycle a wooden pallet without utilizing public waste management systems. The bill sponsor also stated that "this law has always been about affordability" of waste management because "it's been increasingly difficult for our cities and counties to handle the endless influx of plastics into our waste stream, and they have been forced to increase rates on regular folks over and over again." Wooden pallets are designed to avoid the waste stream.

Further proof is California's own data which shows that wooden pallets account for only 0.8%13 of California's Municipal Waste Stream (MWS). And of the few pallets that do arrive at landfills, approximately 67% nationwide are diverted from landfilling because they are reused, ground for recycled applications, or used as top-cover material at the landfill, utilizing their biodegradable material for a sustainable solution.14 That diversion rate is even higher in California at 88%.15 This data shows that the wooden pallet

industry is not burdening the waste stream the same way as single-use packaging. If the goal of producer fees is, as stated by the Circular Action Alliance, “to ensure each producer contributes its fair share of fees to the program based on the type and quantity of materials it supplies and their impacts,” then any fines imposed on wooden pallet producers would be an unjust punishment on predominantly small businesses that won’t lead to a material benefit on an industry already achieving a 95% recovery rate.

CONCLUSION

In summary, the data shows that wooden pallets are not single-use and therefore are not a “covered material” as defined by SB 54. On behalf of the US wooden pallet industry, NWPCA respectfully requests that CalRecycle determine that wooden pallets do not fall within the jurisdictional parameters of SB 54. We welcome continued engagement on this matter.

Response to O-40-1

Comment rejected. The commenter's justification for why "SB 54 does not apply" to wooden pallets actually proves the opposite point: The commenter argues why pallets should be considered not "single-use," but the reason for advancing that argument in the first place is that SB 54 requires materials like wooden pallets to be recyclable or compostable if they are not "single-use." To the extent that any wooden pallets, like any other packaging, satisfy the statutory requirements for being "reusable," the commenter is correct that they would fall outside the definition of "covered material." No change to the proposed regulations is necessary to clarify that effect of statute. Regarding the commenter's justification for why wooden pallets should be considered reusable, that justification fails to consider the criteria in Public Resources Code section 42041(af) and, even if it did, would not merit a change to the proposed regulations, which are not the appropriate place to make particularized determinations. Moreover, entire categories of packaging cannot be considered "reusable" in the manner the commenter desires. Applying the criteria in Public Resources Code section 42041(af) requires examination of the particular characteristics of packaging and the circumstances of its use.

O-41: Household & Commercial Products Association (Molly Blessing)

Comment O-41-1

On behalf of the undersigned organizations, thank you for the opportunity to provide feedback on the draft proposed regulations for California Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act of 2022. We share California’s laudable goals of ending plastic pollution and improving material circularity and are strongly committed to developing and funding a program that successfully achieves these aims.

We represent a coalition of producers who manufacture and sell trusted and familiar household brands, personal care, and food products. We appreciate the thoughtful approach that the California Department of Resources Recycling and Recovery (CalRecycle) has taken in developing the revised SB 54 proposed regulations (draft dated August 22, 2025) and believe the regulations carefully balance environmental stewardship with current economic realities.

We would like to highlight some remaining concerns that we believe are essential to address in order to effectively implement the proposed regulations. Specifically, we consider the proposed approach to component definitions and source reduction requirements to be critical issues that require modifications to ensure the regulations are consistent with the intent of SB 54. Additionally, as CalRecycle considers the technical specifications of certain packaging and product types, such as items that should be considered de minimis, we wish to be a resource to the Department so that implementation accurately reflects the state of packaging on the market today.

Response to O-41-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-41-2

Components

We are concerned that the proposed approach to defining components for the purposes of recyclability and source reduction reporting is unclear, inconsistent with current recycling practice, and will create significant challenges for system implementation.

Regarding reporting, we are concerned that the proposed approach outlined in source reduction guidance shared on September 2, 2025, continues to consider components to be distinct from each other even if they are not detachable and cannot be separated during disposal, collection, or recycling. SB 54 does not require disaggregating inseparable internal sub-parts and doing so would extend the definition beyond what the statute provides. The proposed approach creates major complexity and in some instances, it is impossible to determine the component count given that producers are not provided confidential business information from suppliers that would allow for an accurate assessment.

For example, a trigger spray, commonly used to dispense products such as cleaners and personal care, can have over ten distinct parts that work together to generate the trigger spray functionality. However, the consumer is unable to separate the trigger spray into these various parts and recyclers process the trigger spray as one item. Similarly, the consumer is not able to separate multilayer and laminate films by layer; in-mold labels on a container; plastic necks for screw-top cartons, which are melted into

the carton; and connected “front” and “back” zippers from each other or from the pouch they are attached to.

If only *detachable* components are required to be reported separately, this both simplifies reporting and generates more meaningful and accurate data. Under this approach, for example, a trigger spray would be considered one component instead of 10+ components.

This is helpful for several reasons:
It is consistent with how consumers sort these items and with how they are treated in the recycling process.
It is also consistent with statutory requirements, which are to collect data on the number and weight of plastic components overall, not broken out to more granular detail.
The data collected would be more accurate and consistent because producers would better understand what needs to be reported and be able to gather the appropriate information. It eliminates the issue of producers trying to obtain packaging design information that suppliers may consider confidential and not be willing to share.
The data from 2023 can more easily be compared to future years due to improved consistency in producer reporting, as well as to other states that may be collecting general EPR reporting but not source reduction-specific information.

CalRecycle should adhere to statutory requirements and clarify that components which are not intended to be separated by the consumer or recyclers are considered a single plastic component for the purpose of the source reduction baseline.

Response to O-41-2

CalRecycle rejects this comment, which proposes that components that are not "intended to be separated by the consumer or recyclers" be considered a single component. CalRecycle rejects that proposal for the reasons discussed in responses to comments O-39-5 and O-41-3. To the extent the commenter proposes that the regulations should state that reporting of non-detachable components is not required, CalRecycle rejects that proposal as well. The proposal would eliminate reporting for information necessary for assessing source reduction and recycling rates. The proposal also misunderstands how the regulations identify discrete "components." A single component might have physical subparts if those subparts are not detachable and the component is "distinct with respect to its composition or function." More fundamentally, the commenter's discussion of how, if at all, components are separated in the waste stream ignores why the number of components is even relevant to source reduction. The statute requires reduction in the number of plastic components by 25 percent, so there must be a method for counting that number, but nothing in statute suggests that how and when components are separated from each other should strictly dictate how they should be counted. Lastly, CalRecycle rejects the contention that it might be impossible for producers to know the composition and construction of their own products. No producer—especially trademark owners, whose right to control the use of their brand on goods depends on them retaining

ultimate authority over those goods—is required to conduct business with a supplier that refuses to share basic information required for the business to know whether it is reducing the amount of plastic in its goods.

Comment O-41-3

Regarding recyclability, the definition in the proposed regulations appears to consider detachable components that are typically reattached to a recyclable container before being discarded to be *not recyclable* unless the component itself is independently recyclable. This is clearly inconsistent with the recommendations of plastic recyclers as described in the Association of Plastic Recyclers (APR) Design Guide, which requires evaluation of attachments in conjunction with primary packaging. If SB 54 is implemented in a manner that is inconsistent with what recyclers need to more effectively recycle material, this will hurt, not help California's progress towards a more circular economy.

As written, the proposed approach to detachable components would incentivize producers to a) tether caps to bottles to enable them to be considered "nondetachable," leading to increased plastic use from manufacturing the tether; b) use larger caps that do not fall within the 2-inch small parts range, leading to increased plastic use from the bigger cap; or c) switch from plastic caps to aluminum caps, which can be more expensive for both producers to purchase and recyclers to recover, driving up the cost of the product (especially now with the tariffs they have to adhere to). None of these outcomes are consistent with the laudable goals of SB 54 to improve the recycling system and decrease plastic pollution.

CalRecycle should clarify that, for the purposes of determining recyclability status and recycling rates, components which are instructed to be reattached to a recyclable container must be considered together with the packaging to which they are designed to be reattached prior to disposal.

Response to O-41-3

CalRecycle rejects this comment for the reasons provided in responses to comment O-39-5 and comment O-91-12. Regarding the particular circumstances listed in the comment, those outcomes are not necessarily inconsistent with the goals of SB 54 because they would eliminate the dependence on consumer behavior for products to go through the waste stream intact. In contrast, the change the commenter suggested would mean components would always be considered the same item based on any instruction to do so, regardless of the clarity of those instructions and even if consumers rarely comply. That would undermine the integrity of recycling rate calculations and recyclability determinations.

Comment O-41-4

Source Reduction

The plastic source reduction targets in SB 54 are overly ambitious, unprecedented, and it is highly unlikely they are feasible without significant negative impacts on Californian consumers.

It is unclear whether producers will be able to achieve the goals without a substantial reduction in the amounts of products sold in California, meaning less access by California consumers to everyday items and/or higher prices. Further, we are unable to forecast future economic conditions or the number of producers that may participate with the Producer Responsibility Organization (PRO) at a given point, both of which may impact the ability to meet source reduction targets.

Producers are attempting to prepare for source reduction obligations in the face of this uncertainty, but still do not have finalized regulations, finalized guidance on what is considered source reduction, or an approved PRO plan. If producers are asked to meet targets on an unachievable timeline without adequate guidance, this will likely result in forced noncompliance rather than a meaningful transition to a more circular economy.

To promote successful achievement of source reduction targets, CalRecycle should do the following:

Clearly establish that producer reporting for calendar years 2027, 2030, and 2032 will be used to assess compliance with 2027, 2030, and 2032 source reduction requirements, respectively. This is consistent with the statutory requirement, which does not require compliance prior to January 1, 2027, and provides necessary time for the regulations, guidance, and PRO plan to be finalized so that producers are able to rely on these important documents when making packaging changes.

Restore an adjustment factor for fluctuations in economic conditions or the number of participating producers and add an adjustment factor for sales growth over time. This gives CalRecycle important flexibility to consider changes in the marketplace that may not have been predicted at the time of SB 54's passage, promotes fair competition among businesses, and maintains access of Californians to new products over time.

Remove the requirement to tie post-consumer recycled (PCR) content increases to a 2023 baseline. While there is a statutory requirement to measure overall source reduction against a 2023 baseline, there is not a requirement for CalRecycle to adhere to a specific baseline year in determining an alternative compliance formula for source reduction credit from PCR content use. The use of a 2023 baseline penalizes companies that have proactively incorporated significant amounts of PCR content in their packaging in the decades prior. These companies will be less able to receive a source reduction credit than producers that have put in minimal effort previously, contrary to the intent of SB 54.

Response to O-41-4

CalRecyce rejects this comment to the extent the commenter expresses general dissatisfaction with SB 54 as this is outside the scope of the rulemaking process

and CalRecycle's authority. To the extent the commenter states hypothetical scenarios regarding reduction in products sold, the status of the rulemaking process, reporting entities compliance, the timing of an approved PRO plan, etc., CalRecycle rejects this portion of the comment as it does not state any specific changes to regulatory language, and moreover is primarily dealing in hypothetical situations as opposed to statutory obligations. To the extent the commenter suggests establishing reporting requirements for calendar years, this is already clearly addressed in statute and sufficiently clarified in regulations consistent with statute, with no changes necessary. Finally, regarding the general suggestion of accounting for adjustment factors for fluctuating economic conditions, there is again no specific proposed regulatory text or statutory support regarding how this would be implemented and is consistent with statute. Lastly, the commenter requesting to remove the inclusion of post-consumer recycled content from the 2023 source reduction baseline is inconsistent with the clear intent of statute, especially when the relevant sections are read in conjunction, including section 42057(b) of the PRC which requires CalRecycle to establish a source reduction baseline based on the amount of plastic covered material that was sold, offered for sale, or distributed in the state in the 2023 calendar. As such, the commenter's suggestion goes against language and intent of the Act. As such, CalRecycle rejects this comment. See also responses to I-63-15 and B-27-2.

Comment O-41-5
Technical Resources

All of our members have specific packaging requirements, some required by regulation and some that are part of industry product stewardship practices, to ensure the safety and quality of products ranging from food to personal care, to household cleaning, protection, and maintenance. We would greatly appreciate the opportunity to share information about these packaging requirements with CalRecycle and how the theoretical SB 54 categories, descriptions, and approach to components translate to the practical for our members. We want to be a resource for the Department as the Department considers how to effectively implement these novel packaging policies. Please do not hesitate to let us know if there is information we can provide about our product types and the packaging used for them.

In conclusion, to reiterate, we greatly appreciate the effort that CalRecycle has put into soliciting public comment as part of the implementation process and the Department's consideration of our concerns. We welcome any questions about this letter and look forward to continuing to engage with CalRecycle to position California as an ongoing leader in preventing plastic pollution.

Response to O-41-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-42: League of California Cities (Melissa Sparks-Kranz)

Comment O-42-1

The League of California Cities (Cal Cities) appreciates the opportunity to provide public comment to the California Department of Resources, Recycling, and Recovery (CalRecycle) on the draft regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Chapter 75, Statutes 2022) on behalf of California's 483 cities statewide. Given the circumstances that CalRecycle is now navigating a second iteration of the rulemaking on SB 54, we sincerely appreciate that CalRecycle has continued to provide opportunities for interested parties to provide input on the proposed draft regulations.

In California, local jurisdictions are the backbone of solid waste management and recycling efforts . Cal Cities has long-supported solid waste management and recycling goals that are developed with reasonable and achievable implementation measures, anticipating the need to ensure that communities maintain public health and advance recycling efforts based on our changing climate. SB 54 was successfully chaptered into statute based on several critical components being incorporated into the law, including that producers are responsible for the full costs of processing covered materials to drive towards a more circular economy. Full costs include the costs incurred by local jurisdictions.

The draft regulations are intended to address "affordability concerns", which was the primary response from the Governor's Office as to why the regulations were withheld, preventing CalRecycle from finalizing the rulemaking in March 2025. Local jurisdictions continue to have "affordability concerns" with the draft regulations. If the draft regulations are not clarified to fully implement the requirements of SB 54, as we request in this letter, the program will cause greater affordability burdens on local governments and their ratepayers. It is imperative the regulations support the successful implementation of SB 54 and ensure the program does not cause these greater affordability burdens.

California's Constitution requires that the state reimburse local governments for programs the state requires local governments to carry out. Extensive statutory and regulatory structure governs the manner in which local governments are reimbursed. SB 54 imposes a mandate on local governments. Instead of requiring the state to reimburse local governments for the costs incurred to comply with the mandates, SB 54 requires the PRO to reimburse local governments. Yet the draft regulations fail to explain with any specificity the process for reimbursement, the costs that will be reimbursed, the mechanism for transferring payment to local governments, and even at a minimum the regulations do not even acknowledge that these cost recovery details be included as a requirement in the PRO Plan and budget. We additional have serious concerns with two potential loopholes in the draft regulations with the inclusion of the new categorical exclusion and the eligibility of products being labeled 'compostable'.

Cal Cities respectfully submits for CalRecycle's record that we have remaining concerns with the draft regulations that we believe will hinder how implementation progresses. The following concerns are detailed below:

Response to O-42-1

Comment rejected. No response is necessary to this comment because it only raises general issues discussed in greater detail in later portions of the commenter's submission. To the extent the comment recommends changes related to those issues or raises specific objections, CalRecycle has responded to those later portions accordingly.

Comment O-42-2

1) Comment 1: Section 18980.8 must be clarified to include the definition of a "covered costs" to comply with the mandate to protect ratepayers by fully funding the implementation of the PRO Plan, including paying costs incurred by local jurisdictions.

As drafted, the regulations do not ensure that local governments will be fully reimbursed by the PRO as required by the enacting legislation. Specifically, SB 54 requires that the regulations "ensure the PRO fully funds plan implementation," including "the costs incurred by a local jurisdiction". Ultimately, the Legislature's goal in ensuring fully funding plan implementation was to "allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered material."

Cal Cities believes that the draft regulations must include in Article 8, Sections 18980.8 to reflect that covered costs must be consistent with the requirements of the Act, including but not limited to Sections 42051.1 and 42060 of Public Resources Code. This would clarify that the PRO plan must specify, based on statute, eligible covered costs.

Response to O-42-2

Comment rejected. The commenter incorrectly assumes that CalRecycle's evaluation of the process for determining and paying costs can ignore the requirements set forth in the statute. In all cases, a PRO plan must satisfy statutory requirements. The first sentence of subdivision (g) acknowledges this requirement: Pursuant to [42051.1(g)(1)], the plan shall include a process for determining and paying that will be incurred, or otherwise would be incurred . . . due to requirements of the Act." Moreover, those costs are defined in section 18980.8(g)(2) of the proposed regulations such that they will have the effect the commenter asserts the PRO plan must achieve. In particular, consistent with the statement in Public Resources Code section 42060(a)(1) concerning "protect[ing] ratepayers from increased costs," a cost is necessarily "greater due to the requirements of the Act" if it would exposed ratepayers to increased costs. See, also, CalRecycle's responses to comment I-51-1 and B-29-2.

Comment O-42-3

2) Comment 2: Section 18980.8(g) must include specific requirements for the PRO plan to identify the "mechanism and schedule" for fully funding costs pursuant to the Act.

SB 54 requires that the PRO Plan include not only a process for determining costs incurrent by local jurisdictions (based on information provided by the local jurisdiction), but the mechanism and schedule for transferring the portion of the fee required by Public Resources Code Section 42053(c)(7) to local jurisdictions. The Draft Regulation Section 18980.8(g) does not include adequate information regarding the mechanism and schedule for issuing payments to local jurisdictions for covered costs. As written, the Draft Regulation Section 18980.8(g)(4) simply requires an undefined "reasonable period" and fails require the PRO to include in their plan the "mechanism" for reimbursement.

Cal Cities strongly urges clarification in the draft regulations to address the following:

• Covered costs must be based on information provided by the local jurisdiction;
• The PRO plan must specify how covered costs will be determined in writing by the PRO; and
• The PRO plan must specify the schedule for issuing payments and payment mechanism;

Response to O-42-3

Comment rejected. The commenter cites asserts that statute requires PRO plan to set forth "the mechanism and schedule for transferring the portion of the fee required by Public Resources Code Section 42053(c)(7) to local jurisdictions." However, whether a revision to the proposed regulation is appropriate does not turn on whether the statute includes that requirement for a PRO plan; the question is whether greater detail in the proposed regulation concerning such "mechanism and schedule" is needed. The statute does not require such greater detail because the commenter misinterprets section 42053(c)(7). That provision concerns what the "fee schedule" set forth in a PRO plan must include, not what the proposed regulations must include, and "fee schedule" does not concern the "mechanism" or "schedule" for payments of covered costs. The phrase "fee schedule" must be read as a unitary phrase; in context, "fee schedule" is a description of the various fees that a plan will impose, not a reference to the timing of payments of covered costs, which 42053(c) does not concern, anyway.

Comment O-42-4

3) Comment 3: The draft regulations must specify that the local jurisdiction should be consulted and then notified of payments directly to recycling service providers from the PRO to prevent duplication in cost recovery from local jurisdictions.

Many, but not all, local jurisdictions have existing contracts with recycling service providers to provide the waste management and recycling services within their jurisdiction. While SB 54 allows for both local jurisdictions and recycling service providers to receive payment for their costs from the PRO, it is important not to duplicate requests for payment. For example, if a local jurisdiction has a franchise agreement and is requesting reimbursement directly from the PRO for covered costs, the recycling service provider should not request the same costs of the PRO. To ensure this is handled smoothly, the regulations in Article 8, Section 18980.8 should be revised regarding any costs determined to be a recycling service provider's covered costs, where the PRO or Independent Producer must first consult with and then subsequently notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination. By initiating a consultation first, the local jurisdiction can clarify if the request for covered costs is already a part of their existing contract with the recycling service provider and already a covered cost of the local jurisdiction.

Response to O-42-4

CalRecycle rejects this comment for the reasons provided in responses to comments I-51-1, O-42-2, B-29-2, and O-47-2.

Comment O-42-5

4) Comment 4: The draft regulations must be revised to address how to resolve disputes over the amount that will be paid for a "covered cost" as part of the dispute resolution process.

Section 18980.8(h) offers mediation or arbitration, or any process agreed to by the parties as a way of resolving disputes over what's a "covered cost." However, there's no process for resolving disputes over the amount that is owed to the local jurisdiction for an agreed-upon "covered cost." We believe this is simply a clarification that should be added to Section 18980.8 (h) to ensure that the dispute resolution process does not only address whether a cost is a "covered costs" but also to resolve the amount claimed by the local jurisdiction. We believe this needs to be more explicitly stated in the regulations.

Response to O-42-5

Comment rejected. Section 18980.8(h) of the proposed regulations requires the dispute resolution process to include not only a determination of whether costs incurred by local jurisdictions and recycling service providers are covered costs, but also to "what extent" they are covered costs. This provision addresses the commenter's concerns by including in the dispute resolution process the ability to resolve the amount claimed by the local jurisdiction or recycling service provider. Accordingly, no further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-42-6

5) Comment 5: Section 18980.13, the enforcement provisions pertaining to local jurisdictions, must be **revised to ensure that penalties and fines are not imposed prior to providing local jurisdictions the opportunity to respond to a notice of violation and to cure the violation and that the local jurisdiction's role of materials collection (not transfer) is clarified in the regulations to be consistent with statute.**

As clearly stated in statute, failure to comply with the requirements of the Act, including failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, or retailer to penalties for violations or revocation of an approved plan. SB 54 specifically states the penalties for violation are subject to a PRO, producer, wholesaler, or retailer. Local jurisdictions are not explicitly authorized to develop a corrective action plan to remedy a violation under SB 54 (in large part because they were not anticipated to be subject to enforcement actions).

Firstly, Local jurisdictions are solely required to collect covered materials on the covered materials list, as required in statute under SB 54. Article 11, Section 18980.11 must be revised to explicitly require 'collection', not 'collection and transfer' of covered materials to a responsible end market or intermediate supply chain entity. Cal Cities believes that the provisions in the draft regulations to transfer materials to responsible end markets directly must be removed. This is critical when it comes to enforcement of the regulations and the scope of the local government's responsibility under the Act.

Prior to imposing penalties for a violation, CalRecycle should identify if the PRO or producer are preventing the local government or recycling service providers from complying. CalRecycle should then be required to provide notice to the local jurisdiction/recycling service provider (proposed as two notices issued 90 days apart) and provide a minimum of 180 days to remedy the violation before penalties are invoked. CalRecycle must provide the local jurisdiction/recycling service provider the opportunity to develop a response to remedy the violation prior to any further compliance action being taken.

The draft regulations must recognize that SB 54's enforcement authority is directed toward producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes, including AB 939. The draft regulations impermissibly sought to impose SB 54's enforcement regime intended for the PRO on local jurisdictions and recycling service providers. This approach was unsupported by SB 54's statutory construction and local compliance can be better accomplished through existing enforcement pathways.

SB 54's enforcement authority is clearly limited to imposing penalties on producers and the PRO. The regulations are predicated on the assumption that the term "any entity" in Section 42081(a)(1) of Public Resources Code broadens the scope of its enforcement authority; however, that term must be defined in the draft regulations. Public Resources Code Section 42081 seeks to interpret and implement Public Resources Code Section

42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of Public Resources Code Section 42080.

Public Resources Code Section 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. Public Resources Code Section 42081 in turn:
• Sets the amount of penalties;
• Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;
• Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and
• Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO [...]
Public Resources Code Sections 42083 and 42084 also allows CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the draft regulations would have inappropriately subjected local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot implement a corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling away from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB

341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they collect the required recyclable or compostable covered material categories.

Response to O-42-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060, 42060.5, 42080, and 42081, and no change is necessary to the implementation or enforcement of the Act. First, local jurisdictions are required to comply with the requirements of the Act and may be subject to penalties for any violations of these requirements. See the response to comment O-15-7. PRC section 42081(a)(3) already provides that penalties for any violation of the Act may not begin accruing until 30 calendar days following notification of the violation pursuant to PRC section 42081(a)(1). Therefore, to the extent this comment recommends providing an opportunity for local jurisdictions to remedy violations following notification and before penalties begin to accrue, PRC section 42081(a)(3) already provides local jurisdictions with sufficient opportunity to remedy any violations without incurring penalties. CalRecycle declines to adopt the recommended 180-days period because such period is unnecessarily long and would cause undue delay to the accrual of appropriate penalties for prolonged violations. Moreover, to the extent this comment recommends removal of "and transfers" from section 18980.11(b) of the proposed regulations, no change is necessary because the proposed regulations are already sufficiently clear that local jurisdictions will not be deemed to be in violation or subject to penalties for the lack of responsible end markets. See the response to comment O-29-2. Finally, to the extent this comment makes other recommendations concerning the role of the local jurisdictions in complying with the Act and coordinating with the PRO, see the response to comment O-13-22. No change to the proposed regulations is necessary.

Comment O-42-7

6) Comment 6: The newly added categorical exclusion and the eligibility of products being labeled 'compostable' are two potential unintended loopholes that will drastically effective implementation and increase affordability concerns associated with SB 54.

The draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is necessary to comply with rules, guidance, or other standards issued by the USDA or FDA to prevent microbial contamination or to maintain the safety or structural integrity of packaging. If a conflict arises in implementation, producers can utilize the exemption pathway within subparagraph (4) of Section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle. Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions

are also limited to 2 to 5 years, while excluded materials are permanently removed from the law's purview. We urge CalRecycle to remove Section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (Section 18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

This new categorical exclusion of materials creates a significant and unfounded potential loophole for many producers to exclude their materials from the requirements of SB 54. Not only does this expansion go beyond statutory boundaries, but excluding more materials will result in higher costs for many regulated producers as the fixed costs—such as outreach, collection, processing, reuse/refill infrastructure, and development of responsible end markets—will be spread over fewer businesses. It also means that local governments and our ratepayers will remain responsible for the end-of-life management of much of the single-use packaging that SB 54 intended to shift to producer responsibility. These concerns are shared by a wide range of stakeholders, including producers themselves, and we request this exclusion be removed completely from the draft regulations.

Response to O-42-7

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, a portion of which is substantively the same as this comment and encompasses it entirely. To the extent the final paragraph of this comment is broader in scope than comment I-59-2, CalRecycle still rejects the commenter's suggestion. The revisions to section 18980.2(a)(2) remedy that alleged potential for it to act as a "loophole, and it does not go beyond statutory boundaries but is rather authorized under Public Resources Code section 42060(b). Regarding costs specifically, that concern cannot justify ignoring the clear statutory directive to prevent conflict between the Act and obligations under federal law.

Comment O-42-8

Similarly, the eligibility of items being labeled 'compostable' is highly problematic for successful implementation. AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (Public Resources Code Section 42357(g)(E)).

However, Section 18980.3.3(c)(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste *"if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."* This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable

organic waste" and therefore potentially compostable under SB 54. The intent of Section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. The Section 18980.3.3(c)(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in Section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. Further, while the SB 54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable. Local jurisdictions will have to go to greater lengths to separate these non-materially compostable products in the waste stream which will add greater cost concerns on the backs of ratepayers, which remains a significant concerns for overall implementation.

Cal Cities respectfully requests CalRecycle consider these comments in finalizing their regulatory package.

Response to O-42-8

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

O-43: American Coatings Association (Annebelle Klein)

Comment O-43-1

The American Coatings Association (ACA) submits the following comments to the California Department of Resources Recycling and Recovery (CalRecycle) regarding the agency's proposed permanent regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry and coatings science. ACA appreciates the opportunity to comment and looks forward to working with CalRecycle throughout the rulemaking process.

ACA provides the following recommendations to alleviate any undue burden imposed on the paint and coatings industry.

Response to O-43-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to

suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-43-2

1. Revise the proposed definitions for the terms 'plastic' and 'plastic or polymers.'

SB 54 and the proposed permanent regulations do not provide an adequate and/or clear definition of what constitutes plastic packaging. SB 54 clarifies that 'packaging' is inclusive of packaging components, including independent plastic components, and ancillary elements integrated into packaging. The state's packaging extended producer responsibility (EPR) law defines the term 'plastic' as "a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, [that] includes coatings and adhesives." Moreover, SB 54 defines the term 'plastic component' as "any single piece of covered *material made partially or entirely of plastic*" (emphasis added). CalRecycle's proposed definitions for the terms 'plastic' and 'plastic or polymers' utilize the same or similar language. While SB 54 provides examples of what is and what is not considered to be plastic, the definitions in the law and the proposed permanent regulations lack the necessary clarity for members of the paint and coatings industry to determine what constitutes plastic packaging. Accordingly, ACA urges CalRecycle to reconsider this issue and provide the necessary clarity for all producers. ACA notes that California also has a rigid plastic packaging program for which paint and coatings manufacturers must also develop compliance strategies. ACA recommends that CalRecycle consider alternative methodologies such as developing an exclusive list of what does and what does not constitute plastic, and/or providing that independent plastic components qualify for the de minimis weight and volume exemption in SB 54's definition for the term 'packaging.'

Response to O-43-2

CalRecycle rejects this comment because, rather than request a modification to the proposed regulations, it requests that CalRecycle issue a determination of how the proposed regulations would apply to certain categories of materials, some of which might not even be packaging. The proposed regulations provide detailed criteria that are sufficient to be applied consistently to packaging components; to the extent that stakeholders would benefit from CalRecycle providing illustrative examples of such applications, no revision of the proposed regulations is necessary for CalRecycle to do so. If the commenter intended to propose that the regulations define "integral part of the product," CalRecycle declines to do so because the proposed regulations do not use that term. In any event, the word "integral" has a readily discernible, plain meaning in the context in which the statute uses it (section 42041(s)(4)(B), and the commenter does not propose any definition that it would consider sufficient.

Comment O-43-3

2. Revise Section 18980.13.2 Administrative Civil Penalties to provide that producers will be exempt from penalties on the grounds that any noncompliance was caused by the producer responsibility organization's (PRO) conduct.

Under Section 18980.13.2 Administrative Civil Penalties of the proposed permanent regulations, producers can be issued penalties for noncompliance caused by the PRO's conduct. CalRecycle's proposal unfairly burdens members of the paint and coatings industry by subjecting producers to exorbitant administrative civil penalties for behavior beyond their control. Accordingly, ACA urges CalRecycle to revise its proposal to provide that producers will be exempt from administrative civil penalties on the grounds that any noncompliance was caused by the PRO's conduct.

Response to O-43-3

CalRecycle rejects this comment. See the response to comment I-60-4.

Comment O-43-4

3. Revise Section 18980.13.4 Procedure for a Hearing to provide that respondents have a minimum of forty-five days after receiving a notice of violation or notice of disciplinary action to request a hearing.

Under Section 18980.13.4 Procedure for a Hearing of the proposed permanent regulations, producers (i.e., respondents) are required to request a hearing within fifteen days of being served a notice of violation or notice of disciplinary action. CalRecycle's proposal unfairly burdens members of the paint and coatings industry by subjecting producers to an unreasonably short timeframe to request said hearing and contest any penalties and/or other disciplinary action. Accordingly, ACA urges CalRecycle to revise its proposal to provide that producers have a minimum of forty-five days after receiving a notice of violation or notice of disciplinary action to request a hearing to contest the future imposition of penalties and/or other disciplinary action.

Thank you for your consideration of ACA's comments. Please do not hesitate to contact me should you have any questions and/or require further clarification.

Response to O-43-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act and no change is necessary to the implementation or enforcement of the Act. The timeframe established in section 18980.13.4 of the proposed regulations is reasonable and the recommended timeline of forty-five days is not necessary to the effective implementation of the Act. See the response to comment O-82-80.

O-44: Carton Council (Jordan Fengel)

Comment O-44-1

Dear CalRecycle SB 54 Regulatory Team,
The Carton Council of North America is composed of four leading carton manufacturers -Elopak, Novolex Pactiv, SIG, and Tetra Pak. Formed in 2009, the Carton Council works to deliver long-term collaborative solutions to divert valuable cartons from the landfill. We appreciate the opportunity to provide comments on CalRecycle's draft regulations for SB 54 and offer the following comments for consideration.

> **Response to O-44-1**
>
> Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-44-2

Section 18980.2.5 Covered Material Category List Updates
Comment:
In the discussion document for the SB 54 Informal Public Workshop on the SB 54 "Permanent Regulations" (May 27, 2025) CalRecycle noted that it "deleted language in subdivision (b) of section 18980.2.5 that required updates to the Covered Material Categories List in response to new information or changed circumstances." It seems that CalRecycle only intends to update the CMC List if information has changed, but no more frequently than once per year.
Subdivision (e) of section 42061 of the Public Resources Code states "As part of the process, the Department shall update the list ***at least*** [emphasis added] annually until January 1, 2032." We believe that CalRecycle has an obligation to consider additional data as they become available and publish changes to the list throughout the calendar year to be true to the spirit of the law and to avoid potential negative impacts in these early phases of implementation. Local government service provider contracts (for recycling collection list purposes) need to be informed by any CMC "recyclable" changes well before contracts are renewed. A single update once per year is simply not adequate, as it is not reflective of dynamic circumstances of recyclable determinations. If the list is not current and accurate it will lead to consumer confusion as materials are dropped from collection programs, only to potentially be added back in. This will create consumer distrust of the program. It will also be a burden to businesses and stifle innovation as producers that are committed to using recyclable packaging make unnecessary and costly packaging changes.
We recommend explicitly adding language requiring the CMC list to be updated more frequently than annually if information has changed, but we also understand

CalRecycle's desire to limit administrative burdens. Therefore, we propose the following language:
18980.2.5(b) For purposes of subdivision (a), updates are necessary if new information or changed circumstances renders the list out of date, incomplete, or otherwise inaccurate with respect to how it relates to waste generation and the handling and end-of-life management of covered material. At a minimum the Department shall update the list twice annually if new information and changed circumstances warrant it.

Response to O-44-2

CalRecycle rejects the comment. The commenter's principal assertion—that the proposed regulations limit updates to the CMC list to "no more frequently than once per year—is incorrect. The regulations do not restrict CalRecycle from revising the CMC list more frequently than the statutory minimum when appropriate for the circumstances, and thus no change is required. Furthermore, the process set forth by regulation to review and, if necessary, update the list is completely consonant with the requirement to update the list "at least" within (or "no less than") particular timeframes. A commitment to review twice a year, as proposed by the commenter, would significantly truncate the time needed to obtain longitudinal information and to analyze that information without the guarantee that review and changes are warranted; therefore, it would be inappropriate to set a default for review twice per year. Also, the commenter's concern about the timing of the list and its effect on local jurisdictions and service providers is addressed by section 18980.2.5(g), which explains that list updates imposing additional obligations on local jurisdictions or recycling service providers will not take effect until one year after the change is published.

Comment O-44-3

Section 18980.2.6 Covered Material Category List Recommendations
Comment:
The Carton Council speaks on behalf of four leading carton manufacturers and the obligated producers that carton manufacturers furnish with carton packaging material. We do not understand CalRecycle's methodology regarding how it characterizes material types and forms (MT&F) for cartons – specifically that CalRecycle has divided cartons into two separate CMC and MT&F categories – despite at least 10 requests to CalRecycle by the Carton Council to combine them. The Carton Council asks that CalRecycle explain why it divides aseptic cartons (Category ID PF15P) and gable-top cartons (Category ID PF5P) into two categories when they should be combined into a single CMC. Gable-top and aseptic cartons are widely recognized and managed within the recycling industry under a single material category (including in the EPR systems in Oregon and Colorado and on the draft list in Maine). **These cartons are baled, marketed, and sold** together at Material Recovery Facilities (MRFs) across the country, including within California. The industry does not differentiate between gable-top and aseptic cartons when preparing bales for end markets. In fact, ReMA (formerly ISRI)'s specifications for the Grade 52 bale, keeps gable top and aseptic cartons together. The U.S. EPA, in its waste characterization studies, also keeps aseptic and gable-top cartons together. Consumers often have difficulty discerning the two types of

cartons. CalRecycle's SB 343 MCS Report issued in April 2025 found that the difference in acceptance in recycling programs between the two types of cartons is negligible and programs that stated in the past that they manage them differently in all likelihood no longer do (i.e., any implication that they are collected, sorted, or marketed separately from each other is based on outdated information). Furthermore, the MCS Report found that large volume transfer and processing facilities (LVTPFs) sort both types of cartons at the same percentage for recycling and into the same output stream. Maintaining this artificial and unnecessary distinction between the two types of cartons increases the cost to California consumers, the PRO, and CalRecycle by requiring additional composition study sorting, additional data collection, calculation of two instead of one recycling rates, and separate cost allocation to each carton type.

Response to O-44-3

CalRecycle rejects this comment for the reasons provided in response to comment I-63-11.

Comment O-44-4

Section 18980.4 Responsible End Market Criteria
Comments:

The phrase "can be further processed and recycled" is very broad and the word "can" is subject to interpretation. The Carton Council is concerned that end markets may choose not to source materials from California due to regulatory ambiguity and uncertainty over whether they will be determined to not be a responsible end market if they do not recycle incompatible material that they currently receive and dispose of. CalRecycle's explanatory language states that the subsection is necessary to effectuate the intent of section 42041 of the PRC to prevent responsible end markets from being able to dispose of materials that are capable of being further processed and recycled [to maximize environmental benefits]. This begs the question as to whether CalRecycle expects such activities to take place for minimal amounts of material, and at all costs. This regulatory uncertainty and financial risk could prevent end markets from sourcing material from California. Furthermore, forcing end markets to recycle incompatible material that is not able to be recycled cost-effectively in order to qualify as a responsible end market will increase the program costs due to these regulations, as markets will have to reduce bale purchase prices to comply with these regulations, resulting in higher net costs to California recycling facilities, and ultimately higher costs to California consumers. The Carton Council requests the following edits to this paragraph:

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

Alternatively, CalRecycle can address regulatory risk and uncertainty by adding a specific dollar-per-ton cost limit for what is practicable for responsible end markets with respect to incompatible materials.

Response to O-44-4

CalRecycle rejects this comment. Section 18980.4(a)(3) of the proposed regulations is sufficiently clear and consistent with the relevant statutory provisions, including in PRC sections 42041(aa), 42041(ad), and 42060. The recommended change is not necessary or appropriate for the implementation or enforcement of the Act. See the response to comment O-55-4.

Comment O-44-5

Section 18980.6.7 Eco-modulated Fee and Fee Schedule
Comments:

We request that the word "wholly" be deleted from the draft rules. The declared intent of SB 54 is to reduce plastic use in the absolute, and any packaging that reduces the use of fossil-based plastic, including shifts to formats made from renewable materials, should be incentivized, even if some non-renewable plastic remains. Such innovation should be encouraged rather than discouraged.

Response to O-44-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and the recommended change is not necessary to the implementation of the Act. PRC section 42053(e) requires a PRO to adjust producer fees using malus fees or credits based on specified factors, and PRC section 42053(e)(7) specifically provides that plastic covered materials derived from renewable materials must be subject to a reduced fee relative to plastic covered material derived from a nonrenewable material. Section 18980.6.7(j)(1) of the proposed regulations implements this requirement by defining "renewable materials," for the purpose of PRC section 42053(e)(7), as "materials that are wholly derived from natural resources...[.]" The definition in section 18980.6.7(j)(1) is necessary and appropriate to offer clear, consistent, and certain guidance to a PRO and its participant producers as to when an adjusted producer fee may be expected and appropriate. Moreover, because PRC section 42053(e)(7) presents plastic covered materials derived from renewable materials and plastic covered material derived from a nonrenewable material as a dichotomy, the clear, unambiguous rule in section 18980.6.7(j)(1) is the most reasonable interpretation. As recognized by this comment, one goal of the Act is to reduce plastic use. Accordingly, the language of section 18980.6.7(j)(1) is necessary to ensure that producers' shifts from plastic covered material derived from a nonrenewable material to plastic covered material derived from renewable materials are maximized. In contrast, the recommended change would limit this effect by rewarding and encouraging partial, limited, and incomplete shifts from plastic covered material derived from a nonrenewable material to plastic covered material derived from renewable materials. CalRecycle declines to adopt this recommendation.

Comment O-44-6

Section 18980.11 Requirements for Local Jurisdictions and Recycling Service Providers

Comments:

The Carton Council is supportive of all cartons being recycled by responsible end markets but is concerned that CalRecycle, with this proposed text, may provide too much leniency for local governments and/or material recovery facilities to choose not to recycle a material type, which would disrupt the recycling of that material type and result in consumer confusion.

There is no prohibition of or penalty against a recycling service provider selling processed covered materials to an entity that is not classified as a "responsible end market." However, materials delivered to non-REM facilities cannot be counted by the PRO as "recycled" when assessing the targets of SB 54, so it is to the PRO's advantage to ensure all recyclables are delivered to responsible end markets. SB 54 also requires the PRO to, "in an economically efficient and practical manner," provide responsible end markets. Specifically, the Public Resources Code in paragraph (1) of subdivision (j) of section 42051.1 places the responsibility on the PRO in its budget to include "investments to develop and sustain viable responsible end markets for each covered material." Furthermore, per the Public Resources Code section 42053, subdivision (d), paragraph (1), it is the responsibility of the PRO to incur "costs to develop and sustain viable responsible end markets for each covered material category." The PRO cannot develop markets if there is no assurance of the ability to obtain adequate material supply for end markets, potentially resulting in a chicken-and-egg scenario of no end markets due to no supply, and no supply due to no end markets.

The Carton Council is also concerned that temporary market disruptions, such as those due to a port or transportation strike or a mechanical issue at a recycling facility, could result in ceasing to collect otherwise recyclable materials for a period of two years, inhibiting market development efforts. For the above reasons the Carton Council requests that this proposed text be deleted:

However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

Thank you for the opportunity to provide these comments on behalf of the Carton Council and its members.

Response to O-44-6

Comment rejected. To justify the requested deletion of the final sentence of 18980.11, the commenter states two concerns: that the proposed regulations "provide too much leniency for local governments and/or material recovery facilities to choose not to recycle a material type" and that "temporary market disruptions . . . could result in ceasing to collect otherwise recyclable materials for a period of two years." CalRecycle declines to make that change because that sentence states a straightforward, unavoidable application of plain language in statute. Public Resources Code section 42060.5(b) requires CalRecycle to

grant exemptions from the requirement that local jurisdictions and recycling service providers include certain covered material "in their collection and recycling programs" if doing so is "not practicable." For two reasons, impracticability must be deemed established if there are no responsible end markets available to process the covered material. First, it would be nonsensical for the Legislature to have intended that materials be considered "include[d] in . . . collection and recycling programs" if those materials will not possibly be recycled after collection. If that were how the statute applied to local jurisdictions' and recycling service providers' obligation, then they could satisfy it by simply collecting materials and dumping them in landfills. Second, the only way for materials to be considered "recycled" is for them to be processed by responsible end markets. So, the absence of such end markets necessarily establishes that recycling of the collected material is impossible.

The commenter's concern over temporary market disruptions is also overstated because, if a market disruption is known to be "temporary," there would not be an "absence of responsible end markets" and thus no "impracticability," and the disruption would be unlikely, in any event, to last longer than needed for completion of the process outlined in section 18980.11.1(d).

O-45: Surfrider Foundation (Miho Ligare)

Comment O-45-1

The Surfrider Foundation ("Surfrider") is a national non-profit organization dedicated to the protection and enjoyment of the world's ocean, waves, and beaches for all people through a powerful network of activists. Surfrider Foundation works to eliminate the impacts of plastics on the environment and communities by advocating for a reduction in single-use plastics.

Overall, the successful implementation of the Plastic Pollution Prevention & Packaging Producer Responsibility Act (SB 54) hinges on CalRecycle maintaining strong oversight of the Producer Responsibility Organization and the implementation process. Processes must be clearly laid out and transparent, including data collection, and true and effective source reduction must be prioritized by cultivating robust, equitable reuse and refill systems, all while centering and prioritizing environmental justice and tribal voices.

Many of Surfrider's previous comments throughout the rulemaking process still have yet to be adequately addressed in this round of updated regulations. Although CalRecycle staff have stated that further refinements will be made in the future, it is imperative to have the strongest set of regulations that lay out a clear framework as to how the objectives of the law will be met. In this vein, we are reinforcing the following comments:

- Ensuring Effective Allocation of Mitigation Fund
- Article II: Covered Material and Covered Material Categories
- Article IV: Responsible End Markets

• Effective Implementation and Enforcement of Statewide EPS Foodware Prohibition

Response to O-45-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-45-2

Ensuring Effective Allocation of Mitigation Funds

Overall, there are concerns about the mitigation funds, the process, and how to ensure that the funding will go to the communities most burdened by plastic pollution. Although the mitigation funds will be allocated through the legislative budget process and are not addressed in the draft regulations, **it is critical to ensure environmental justice and tribal representation throughout the SB 54 implementation process and establish a clear process and understanding of how the mitigation funds will be allocated**.

We encourage CalRecycle to hold public workshops throughout the state on this topic and dedicate a webpage to helping the public understand the mitigation fund, timeline, and process to access funding. Please also explain how CalRecycle plans to work with other State agencies, including the California Department of Finance, to maximize coordination and positive impact on disadvantaged communities, and minimize barriers in the grant-making process to marginalized communities.

Response to O-45-2

CalRecycle rejects this comment. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends ensuring that environmental justice and tribal interests are represented in the allocation of mitigation funds, as acknowledged by this comment, the allocation of such funds is not within CalRecycle's authority under the Act. See the response to comment I-63-18. Moreover, to the extent this comment recommends holding public workshops and dedicating a webpage to help the public understand the mitigation fund, these recommendations are not within the scope of the proposed regulations or present rulemaking process. Therefore, no further response or change to the proposed regulations is necessary.

Comment O-45-3

Article II: Covered Material and Covered Material Categories

Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1): Additional Clarity Needed

Source reduction through refill and reuse systems should be prioritized as they are the most effective ways of reducing plastic pollution.

We appreciate CalRecycle's approach to allowing for innovation and room to grow for refill and reuse systems. However, we have concerns that the ***Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1)*** may be too lax, and additional clarity is needed. The current regulations allow for more opportunities for disingenuous "reuse" designed to skirt the fees and recyclability requirements of the law. To allow for only truly refillable or reusable packaging, we recommend CalRecycle:

• Adopt stricter, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity.
• For consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status. The PRO plan should also identify a clear strategy for quantifying the amount of reusable and refillable packaging that is actually reused, as well as outlining steps that the PRO is implementing to maximize these numbers (including through deposits or other incentives).
• Packaging cannot be considered reusable if it doesn't get collected and reused, which should be backed by verifiable data, and proper and clear labeling.
• Establish a process for adopting third-party certification requirements when they become available.

We also heard from over 50 California-based Ocean Friendly Restaurants (OFRs), who are a part of Surfrider's national network of over 600 OFRs, that without adequate standards for reusable and refillable packaging, it will make it harder for businesses to implement reuse and refill systems affordably and effectively. Broad exclusions for more types of products will stifle innovation and confuse business owners without lowering the price of sustainable alternatives.

Response to O-45-3

CalRecycle rejects this comment for the reasons stated in response to comment O-75-3.

Comment O-45-4

Categorically Excluded Materials (§18980.2): Must Drastically Narrow Scope and Include Mandatory Sunset

Although we understand that the intent for categorical exclusions is to only apply to materials that are not "reasonably possible" to transition to a compliant material due to unique challenges. However, we are concerned that the categorical exclusion framework in Section 18980.2 is overly broad and could exempt large portions of food packaging, including primary, secondary, and tertiary components, simply because they serve a food safety function under FDA or FSMA standards.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

We recommend CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Furthermore, we urge the exclusions to have a prescribed sunset. When exclusions are granted, they should also be time-bound. Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions. Without these changes, the FDA/USDA exclusion risks creating a loophole large enough to exempt the majority of food packaging—undercutting the recyclability and source reduction objectives at the heart of SB 54. With such a wide swath of categorically excluded materials, it seems like the PRO is set up to fail, as it will be underfunded, and there will be an unfair burden on those participating in the PRO. This also means that it would be harder to meet source reduction targets, as there are fewer producers. Finally, it will also have ripple effects on refill and reuse, and create an equitable system, as there will be fewer incentives and funding from the PRO to transition from disposable packaging to refill.

Response to O-45-4

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, a portion of which is substantively the same as this comment and encompasses it entirely. To the extent the final paragraph of this comment is broader in scope than comment I-59-2, CalRecycle still rejects the commenter's suggestion. The revisions to section 18980.2(a)(2) remedy the alleged potential for it to act as a "loophole. Regarding funding and the distribution of burden, that concern cannot justify ignoring the clear statutory directive to prevent conflict between the Act and obligations under federal law.

Comment O-45-5

Exemptions for Certain Covered Materials (§18980.2.4): The Exemption Application process must include public deliberation and be public record

The proposed exemption process for packaging based on "unique challenges for compliance " doesn't have any requirement that decisions be made in an open forum with input from the public. Despite subsection (d) of 18980.2.4 proclaiming that applications are "public documentssubject to mandatory disclosure under the California Public Records Act ," there is no mandated transparency in the regulations, and is instead reliant on the public requesting data. Given the wide range of possible applications, **it is imperative that any proposed exemption only be granted with public input and adoption of any exemptions should become a part of public record**.

Response to O-45-5

CalRecycle rejects this comment. Statute requires CalRecycle to establish processes for identifying circumstances that may warrant exemptions (PRC section 42060(a)(3) and (4)) but leaves the details of those processes to CalRecycle's discretion and includes no requirement that CalRecycle consider public input. The only limitation set forth in statute is the overall mandate set forth in PRC section 42060(a): that CalRecycle "adopt regulations necessary to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met." Moreover, it is not practicable to require every exemption request to be subject to a formal public comment process, which would impede CalRecycle's processing of exemption requests to an extreme degree. Lastly, CalRecycle is competent to evaluate whether an exemption request properly accounts for the interests of affected parties or whether input from such parties is required for CalRecycle to fully assess the justification for the exemption. While the proposed regulations do not expressly require an exemption application to include such input, CalRecycle retains the discretion to reject applications where the lack of it renders the justification for the exemption insufficient.

Comment O-45-6

Article IV: Responsible End Markets

End Market Identification (§18980.4.1): Provisions around recycling technologies are dangerous, inconsistent with statutory requirements, and devastatingly lenient

The focus on management of waste through permits and the production of "significant quantity of hazardous waste" in Section 18980.4.1(d)(1) and Section 18980.4.1 (d)(B) as to the generation of waste which is in statute is a significant shift away and opens the door for chemical recycling and is problematic. SB54 language refers to the ***amount*** of hazardous waste, not the ***"risk"*** associated with it, and these are clearly different standards. The proposed regulatory framework in this regard is also clearly and critically at odds with the SB 54 statute.

We would like to see alignment with the statute and regulations in the form of a categorical prohibition on chemical recycling technologies, as envisioned in SB 54's requirement that CalRecycle "exclude plastic recycling technologies that produce significant amounts of hazardous waste."

Furthermore, the regulations reference the *federal* definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. Use of the weaker federal definition problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

CalRecycle should reference and cite the chemical recycling technologies identified in Senator Allen's Letter to the Journal and respective committee analyses, including solvolysis, solvent-based technologies, pyrolysis, incineration, and gasification .

Chemical recycling and related technologies are ultimately a form of burning plastic and harm our communities and the environment. Uncontrolled pollution from these processes poses significant health and safety risks for local populations, placing a heavy toxic burden on workers and surrounding communities, the majority of which are low-income and communities of color.

Statutory construction of the definition of "recycling" in PRC § 42041 (aa) allows for arguments on both sides, **but the strongest arguments rely on the Legislature's intent to exclude chemical recycling from the definition of "recycling.**" The legislative history, as evidenced by discussions of the harmful effects of chemical recycling in committee reports, shows the Legislature did not intend for producers to use chemical recycling processes to comply with SB 54's recycling targets.

Response to O-45-6

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-45-7

Effective Implementation and Enforcement of Statewide EPS Foodware Prohibition

Due to EPS's negative impact on our communities, human health, and environment, EPS food service ware has a different timeline and recycling rates outlined in the statute (Section 42057(i)), compared to other covered materials categories in the statute.

We appreciate CalRecycle's work to create a webpage and send out notices with additional information to EPS producers. However, the draft regulatory text is still too

vague. **We would like to see CalRecycle provide more enforcement beyond education and assistance**.

We would also like to see more transparency regarding how and who CalRecycle is reaching out to and providing compliance support. For example, what is happening with CalRecycle's online notification portal?

Furthermore, producers who are unable to demonstrate to the department that the polystyrene recycling rate is met on January 1, 2025, should not have the opportunity to come back in the future attempting to show that they meet the target recycling rate. There is concern that there will be an increased focus on false "recycling" of EPS at the cost of communities and the environment. Some facilities process EPS using chemical recycling methods, but as stated in past comments, **chemical recycling and related technologies should not be counted as recycling.**

We look forward to staying engaged in this important process and appreciate the staff's dedication and hard work to review and incorporate comments.
Thank you for your consideration.

Response to O-45-7

CalRecycle rejects this comment. To the extent this comment recommends further clarification as to CalRecycle's enforcement authorities with respect to the expanded polystyrene recycling rate requirements of PRC section 42057(i), the proposed regulations are consistent with the requirements of the Act, including PRC sections 42057, 42060, 42080, and 42081, and no change is necessary to the implementation or enforcement of the Act. Section 18980.13 already establishes the extent of CalRecycle's enforcement authorities under the Act, including when a violation will be deemed to occur and the process by which penalties will accrue. Section 18980.13 applies to violations under PRC section 42057(i) as it does to violations of any other provision of the Act. To the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required. To the extent this comment urges more transparency to the online notification portal, no response is required because this comment is outside the scope of the proposed regulations and does not relate to the present rulemaking process. Finally, to the extent this comment recommends the prohibition of chemical recycling, no response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

O-46: Personal Care Products Council (Bridget Corridon)

Comment O-46-1

The Personal Care Products Council1 (PCPC) is pleased to submit the following comments on the Final Regulation Text for SB 54, Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "proposed final regulations"). Our member companies are involved in the distribution and sale of over-the-counter nonprescription drug products, cosmetics, toiletries, fragrances, and ingredients in California, and therefore have a strong interest in the rulemaking and implementation of SB 54. PCPC remains supportive of extended producer responsibility (EPR) programs that allow for stakeholder collaboration to ensure the program is structured for innovation and expanded waste reprocessing. PCPC recognizes and appreciates the ongoing effort by CalRecycle to revise and develop the regulations.

Response to O-46-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-46-2

PCPC commends CalRecycle and is supportive of several new revisions to the regulations that remain from the draft regulation text issued in May 2025 including:

1. Removal of barriers for new recycling technologies (§18980.3.6)
2. Change in Minimum Duration for Approved Exemption (§18980.2.4 (g))
3. Revisions to Refillable and Reusable Designs (§18980.2.1)

While PCPC appreciates and supports many of the improvements retained from the May 2025 draft regulations, PCPC and its members strongly recommend Cal Recycle consider the following changes to the proposed regulations.

Response to O-46-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-46-3

1. <u>Over-the-Counter (OTC) Drug Exclusion (Section 18980.2(a)(6)) is unnecessarily narrowed and not in compliance with the statute.</u>

The statutory text of SB 54 specifically states "covered material" does not include packaging for "[m]edical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs.

321(g), 321(h), and 353(b)(1)).” California Public Resources Code § 42041(2)(A)(i) (2025). In the regulations, section 18980.2(a)(6) provides an exclusion for OTC drugs, however, the OTC drug exclusion is unnecessarily narrowed by subparagraphs (A) and (B) and is not in accordance with SB 54’s statutory language.

State regulators must operate within the boundaries set by the statutes passed by the legislature. Agencies, like CalRecycle, are not directed to create or enforce rules that go beyond or contradict the statute’s language or intent. Regulations must be firmly rooted in the enabling legislation, ensuring that implementation remains faithful to the law, is transparent to the public, and does not exceed the scope of authority established by the legislature. This principle safeguards the integrity of the rulemaking process and reinforces the public’s trust in government. Unfortunately, sections 18980.2(a)(6) (A) and (B) are not in accordance with plain language of the statute.

The statutory text of SB 54 specifically states “covered material” does not include packaging for “[m]edical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).” See California Public Resources Code § 42041(2)(A)(i) (2025. This creates three statutory exemptions: medical products, devices, and prescription drugs. The statue also provides three specific citations for the category types that should be excluded: 21 U.S.C. § 321(g), 21 U.S.C. § 321(h), and 21 U.S.C. § 353(b)(1).

First, 21 U.S.C. § 321(h) defines a "device" as any instrument or related article used for similar diagnostic or therapeutic purposes, which does not achieve its primary intended effect through chemical action or metabolism. Next, 21 U.S.C. § 353(b)(1) stipulates that certain drugs must be dispensed only via prescription. Finally, 21 U.S.C. § 321(g), defines a "drug" as any article recognized in official compendia or intended for use in diagnosing, curing, mitigating, treating, or preventing disease, or affecting the structure or function of the body, excluding food unless otherwise specified.

The plain language of the SB 54 statue provides that “medical products” includes those products defined by federal law in 21 U.S.C. § 321(g). OTC drugs are covered by 21 U.S.C. § 321(g) as they are intended for therapeutic use, are regulated by the FDA via a common statutory framework, and subject to strict safety, labeling, and manufacturing requirements. FDA’s classification of these products as drugs ensures that they are already subject to robust lifecycle regulation, including packaging standards, labeling requirements, and facility registration. Although CalRecycle has publicly stated it struggled with defining “medical product,” it cannot use the regulatory process as a way to circumvent the statutory text.

Subparagraphs (A) and (B) in Section 18980.2(a)(6) should be removed as they provide an unnecessary restriction on the definition of “medical products.” CalReycyle’s current interpretation and restrictions on “medical products” contradicts the clear language of SB 54 that was adopted to exclude all nonprescription drugs.

Additionally, maintaining the integrity, safety, and efficacy of OTC products requires packaging that meets rigorous, science-based standards that serve important public health functions and cannot be compromised by secondary considerations. For FDA-regulated OTC products, specific packaging may be essential to ensure the stability of active ingredients throughout the product's shelf life, whether in sunscreens, mouthwashes, or toothpastes. This necessitates robust barriers against moisture and vapor transmission—requirements that cannot be met through conventional plastic reduction methods without violating FDA regulations. Additionally, child-resistant packaging mandated by the Consumer Product Safety Commission under the Poison Prevention Packaging Act imposes further design constraints. These combined regulatory obligations make clear that for OTC products, packaging reduction targets must be approached with caution to avoid undermining essential safety and efficacy standards that protect consumers.

Response to O-46-3

CalRecycle rejects this comment for the reasons stated in response to comment B-11-3. CalRecycle also notes that the commenter's unsupported claim that the "plain language" of the SB 54 statute provides that 'medical products' includes those products defined by federal law in 21 U.S.C. § 321(g)" is untenable. The cited federal law does not use that term, and, contrary to the commenter's assertion, the "plain language" of Public Resources Code section 42041(e)(2)(A)(i) refers only to the goods "defined as devices or prescription drugs," with no reference to the more general definition of "drugs."

Comment O-46-4

2. Cosmetics are a federally regulated category not granted an opportunity to apply for an exemption pursuant to Section 18980.2 (a)(1)(2).

In the Categorically Excluded Materials Section (18980.2) (a)(1)(2) PCPC requests that CalRecycle add "cosmetic" to expand the determination of exclusion allowance for packaging or packaging components used within the food, agricultural and cosmetic industries. This section selectively favors the agriculture and food and beverage sectors while overlooking other industries subject to equally rigorous safety standards set forth by the FDA. FDA's Modernization of Cosmetics Regulation Act of 2022 (MoCRA) and the European Medicines Agency (EMA) also require microbial testing for cosmetics, including challenge tests to ensure products remain safe under normal use conditions. The cosmetics industry has strict protocols to prevent microbial contamination and ensure the integrity of product packaging. Packaging is fundamentally important in preserving the integrity and efficacy of personal care products. Its role in product protection cannot be emphasized enough.

For example, mascara, a cosmetic, is applied to the sensitive eye area and is susceptible to microbial proliferation. To mitigate these risks, mascara packaging is specifically designed to provide essential protection. It is engineered to be airtight and incorporates wiper systems that significantly limit oxygen exposure and reduce microbial transfer. This protective packaging design is absolutely critical for maintaining

the product's hygienic quality and preventing microbial contamination from repeated use. Similarly, spray bottles for sunscreen, setting sprays, and hair styling are designed and used to prevent direct hand contact with the bulk product. This reduces the risk of contamination from airborne bacteria, dust, or particles. Bottles with pump applications for liquid foundation dispense a precise amount of the product without exposing the remaining contents to the outside environment, further mitigating contamination risks from airborne bacteria, dust, or particles. Airless pumps eliminate air ingress, thereby reducing oxidation and preserving the efficacy of sensitive formulations. Dropped bottles for face oils and serums are designed and used to minimize contact with users' fingers, lowering the risk of microbial transfer. Squeeze tubes with application tips, commonly used in products like acne spot treatment and eye creams, limit product exposure to both consumer's hands and the air. These products are often sealed with tamper-evident caps to ensure product safety and integrity.

Including cosmetics in this subsection allows for the cosmetic industry to work towards incorporating protective packaging designs that align with CalRecycle's goals under SB54, while affording them the opportunity to apply for an exemption, if necessary, to minimize contamination, preserve product stability, and protect consumers.

Finally, PCPC asks that CalRecycle clarify who or what is an "entity" under Section 18980.2(a)(2)(A). As currently written, it is not explicitly clear if an "entity" like a trade association can notify CalRecycle on a producer's behalf.

Response to O-46-4

Comment rejected. The cosmetic industry's "strict protocols" are not laws, and the federal law cited by the commenter does not impose the same packaging restrictions as federal law does for food and agricultural products. To the extent legal restrictions render compliance challenging or impracticable, exemptions pursuant to Public Resources Code section 42060(a)(3) and (4) are available. CalRecycle also declines to revise section 18980.2(a)(2)(A) with respect to "entity," which is plain on its face.

Comment O-46-5

3. Definition of Plastic (Section 18980.1 (15))

The proposed regulations cite the definition of plastics contained in Section 42041. Public Resource Code Section 42041(t) states

(t) "Plastic" means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches.

PCPC requests that CalRecycle remove or exclude “coatings and adhesives” from the definition of “plastic.” Including coating and adhesives in the definition makes it challenging for producers to determine and report for every single package material. Additionally, including coatings and adhesives raises questions on what a plastic component would be and estimating the weight for reporting to the PRO.

Response to O-46-5

CalRecycle rejects this comment because it requests that CalRecycle modify the definition of "plastic" in Public Resources Code section 42041(t). Regulations cannot revise statutes.

Comment O-46-6

4. Inconsistencies and the lack of harmonization between SB 54 and other existing laws create undue burdens on manufacturers and producers.

PCPC and its member companies reiterate that they are supportive of effective and well-designed EPR laws. Cosmetic products and OTC drugs are distributed worldwide and harmonization across states is crucial to reduce confusion and encourage the use of recyclable materials in products. The rapidly expanding framework of EPR laws both nationally and internationally, like the Packaging and Packaging Waste Regulation in Europe, will result in many more producer reporting categories, making compliance significantly more complex and costly for producers. Furthermore, without significant changes, the lack of harmonization with other states and other California laws will create obstacles that inhibit reasonable compliance and stifle innovation.

The existing patchwork of EPR laws in several states poses a significant challenge for manufacturers operating with a global supply chain - PCPC is concerned with the compliance challenges imposed on companies with SB 54, and California’s SB 343 (“Truth in Labeling” law) will exacerbate these issues. Recycling compliance in California is nearly impossible because California has passed two recycling laws that are complex, confusing, unharmonized, and in some instances, directly conflicting. The implementation of both laws has resulted in two separate covered material category lists regarding the recyclability of packaging in the state of California. SB 54 requires that by 2032, 100% of packaging is recycled or compostable in the state. Producers must consider both the SB 54 and SB 343 recyclable list and as these lists do not work in harmony, there will be limitations on what materials can be considered recyclable and thus sold in the state of California. For example, SB54 classifies the material types differently than SB343. SB343 categorizes glass into categories based on form and color, whereas SB54 classifies glass into categories based on form and size. As another example, the SB343 study indicates that 75% of California’s population has access to recycling facilities that accept LDPE clear beverage bottles and 73% accept LDPE clear single-use rigids. However, the SB 54 assessment indicates these containers as not recyclable.

Compounding this, the 2025 Final Materialization and Characterization Study from SB 343 does not contain a final summarized report of what is considered recyclable in the state. Moreover, we also understand that CalRecyle is taking the position that its Final Materialization and Characterization Study does not provide binding guidance to industry on what can/cannot be labeled as recyclable. This makes it challenging and confusing for manufacturers, producers, and ingredient suppliers to assess their own packaging. Since CalRecycle's published SB 343 list is not definitive and thus subject to multiple interpretations, producers face the risk of increased litigation despite their well-intentioned efforts to comply with the regulation, especially when coupled with a lack of clarity from CalRecycle on enforcement dates. At a minimum, CalRecycle should analyze and harmonize its own data and report its conclusions on what is recyclable based on its own criteria outlined in SB 343 and SB 54.

Response to O-46-6

CalRecycle rejects this comment because, instead of recommending changes to the proposed regulations, it raises concerns over CalRecycle's authority under a separate law (SB 343) and CalRecycle publications that are outside the context of this rulemaking.

Comment O-46-7

5. Source Reduction

a. Establishing common-sense compliance measurement periods for source reduction (§18980.9.1) provides certainty for producers.

Neither SB54 nor its proposed regulations specify the reporting period to be used for measuring compliance against the source reduction requirements. It is imperative that producers know now when the compliance will be measured to understand what they must do to comply. PCPC proposes adding language to paragraph (2) of subdivision (d) to specify that source reduction requirements that are required as of January 1, 2027, 2030, and 2032, are based on producer source reduction reporting using the measurement period of the respective calendar years of 2027, 2030, and 2032.

Considering the lack of final regulations, finalized Covered Materials Categories (CMC) material description guidance, and an approved Producer Responsibility Organization (PRO) plan, producers do not and will not have the information necessary to implement source reduction compliance any earlier than calendar year 2027. Without finalized regulations and related guidance, producers cannot begin to implement packaging changes. Once the regulations are final, producers still need sufficient lead time to develop, test, and implement packaging changes. There are less than three months remaining until January 2026, which is far too short a timeline for compliance.

Response to O-46-7

CalRecycle rejects this comment, see responses to B-27-2, I-63-15, O-48-5, and O-41-4.

Comment O-46-8

b. Source reduction plan should allow for adjustment factors based on sales growth

The wholesale deletion of Section 18980.8.3 removes the PRO's express ability to utilize important, common sense adjustment factors in the development of its source reduction plan. The deleted section included adjustment factors for fluctuations in economic conditions and the change in number of producers participating in the PRO plan. This section should be restored, and PCPC proposes adding a third common sense adjustment factor for the PRO to incorporate into its source reduction plan: adjustments for product sales and company growth over time.

The adjustment factors in the deleted text protect against arbitrary shifts in economic conditions or the number of producers participating in the PRO plan. For example, without these adjustment factors, an economic decline that results in lower consumer consumption in a reporting year may result in the PRO achieving its source reduction targets without any producer changes to packaging.

PCPC's proposal to add a third adjustment factor to account for product sales growth over time allows the PRO to incorporate producer reporting of sales adjusted material usage into its source reduction plan to normalize for business growth. Without such an adjustment factor, the proposed regulations penalize sales growth by disproportionately forcing producers with growing sales to reduce plastic usage to compensate for additional products sold. An adjustment for sales growth ensures that a large, steadily growing company like many of PCPC's members, who may be doing everything possible to source reduce its packaging for individual products, is not subject to anticompetitive standards that require them to meet more rigorous requirements than a company with stagnant or declining sales. If kept as written, this potentially requires growing companies to cease or even reverse their sales growth in California to meet absolute source reduction requirements. A sales growth adjustment decouples growth from plastic usage longterm, thereby enabling fair and robust competition among businesses in California and allowing businesses whose innovation is rewarded by California's consumers to grow in the California market by focusing on source reduction by product sold versus absolute source reduction.

PCPC proposes restoring §18980.8.3 and adding the following language to §18980.8.3(a):

Subject to the limitations of this section, a source reduction plan developed pursuant to subdivision (f) of section 42057 of the Public Resources Code may utilize adjustments factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO plan *and must utilize adjustments factors and methods to allow producer reporting of material usage to be adjusted by units of sale to normalize business growth over time, in each case* for determining whether the PRO has met its source reduction obligation relative to the baseline established by the Department under subdivision (b) of section 42057 of the Public Resources Code.

Response to O-46-8

CalRecycle rejects this comment for the reasons set forth in response to comment B-11-6.

Comment O-46-9

c. PCR Certification (§18980.3.4)

SB 54 specifies that the PRO may apply for a source reduction credit up to 8% through an alternative compliance formula that offers source reduction credit "on a sliding scale based on the ratio of virgin plastic to postconsumer recycled content plastic to producers who incorporate postconsumer recycled content into plastic covered material." Paragraph (1) of subdivision (b) of Section 18980.3.4 of the proposed regulations requires that the PRO measure the increase in absolute amount of postconsumer recycled content (PCR) used versus a 2023 baseline.

Many producers began incorporating PCR into packaging decades ago and had achieved significant amounts of PCR usage by 2023. Measuring producers' absolute volume increase of PCR based on a 2023 baseline does not recognize, and in fact penalizes, the proactive sustainability efforts of producers who voluntarily took early action to incorporate PCR into plastic packaging prior to 2023. Additionally, companies that have been doing source reduction for years may not be able to do additional source reduction and have the product remain fit for purpose. This also may prevent the PRO from being able to claim the full 8% source reduction credit. Necessarily, due to PCR already incorporated prior to 2023, the ability to incorporate more is limited.

Response to O-46-9

CalRecycle rejects this comment for the reasons stated in response to comment B-11-17.

Comment O-46-10

6. Restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling.

PCPC recommends CalRecycle restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling. CalRecycle has previously recognized physical recycling in earlier versions of the draft regulations.

Physical processes can be operated in tandem with mechanical processes to vastly improve the quality of output. This broadens the potential applications for recycled plastic and promotes continued circularity in similar types of applications, helping to reduce the amount of plastic that is downcycled.

Additionally, advanced recycling is a critical component of plastic packaging circularity, recovering it as a raw material at scale which can be utilized in high-quality plastic packaging that adheres to strict quality regulations for direct food contact and medical applications. Further, mechanical recycling can effectively sort some plastic polymers, such as HDPE and PET, but is less suited to address other categories of plastic waste. Advanced recycling technologies should complement mechanical and physical recycling processes by providing a sustainable end of life for a variety of difficult to recycle plastic materials, including low-density plastics such as films and flexibles.

By unnecessarily restricting and limiting certain recycling technologies, the proposed regulations will inadvertently hamper the very goal SB 54 seeks to achieve-building a circular economy-by disincentivizing innovation, banning the use of future innovations in those technologies, and reducing the volume of recyclable material entering the system.

Response to O-46-10

CalRecycle rejects this comment for the reasons set forth in response to comment B-11-8 and because the comment offers no explanation based on the generation of hazardous waste, despite the express purpose of the relevant statutory provision (Pub. Resources Code section 42041(aa)(5)) being the avoidance of significant amounts of such waste.

Comment O-46-11

<u>7. SB 54 proposed regulations text on detachable components and small format packaging should align with the Association of Plastic Recyclers Design Guide and not arbitrarily penalize producers for using a small, but otherwise recyclable, component.</u>

<u>a. Detachable Components</u>

In the draft rules additional language was added §18980.1(a)(40(C)(ii) to specify that a "detachable component" is defined by certain characteristic "regardless of whether the component is discarded attached to the other components." This additional language negatively impacts the recyclability determination for components that are made of recyclable material but are less than two inches by two inches in size, which on their own would not currently be considered recyclable due to their size but would be considered recyclable when reattached to the larger recyclable packaging. Additionally, this language is directly contrary to the Association of Plastic Recyclers (APR) Design Guide, which recommends leaving plastic caps on bottles and containers when recycling.2

APR specifically advocates that consumers reattach caps and lids prior to disposal. Doing so increases recyclability, enabling the plastic in the caps and lids to be recovered and recycled when they otherwise might be inaccurately sorted as small parts or other materials in processing, resulting in their disposal rather than recovery. APR also notes that reattaching lids prior to disposal reflects consumer practices, increasing compliance with recycling by making it easier to properly dispose of waste.

By requiring that reattached caps and lids are treated separately for categorization, the proposed regulation contradicts the approach set out by APR, preferred by recycling facilities, and adopted by consumers. This approach does not reflect actual collection and recycling practices and undercounts the amount of recycled material; caps and lids that are, in fact, recycled attached to bottles would be artificially categorized as non-recyclable small parts or non-recyclable materials. By artificially undercounting certain recycled materials, the system is likely to disincentivize designs and practices that would increase recycled material and to result in an inaccurate recycling rate for these materials. Taking a position contrary to the APR Design Guide, as the proposed regulations do, negatively impacts both the calculation of actual recycling rates for components and the recyclability determination for components in a way that does not match current recycling practices.

For the calculation of actual recycling rates for components, under the proposed regulations a recycling rate is calculated using the covered material category applicable to each component standing on its own, regardless of whether the component is designed to be reattached to the primary packaging. The APR Design Guides instruct components to be reattached, and current material recovery facilities process the packaging as a whole and sort it into a single recycling stream. Understanding this guidance, a single recycling rate should be calculated for the covered material category applicable to component and the packaging to which it is reattached. PCPC proposes adding language to Section 18980.1. and Section 18980.3.2. to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.

Finally, when recycling is made easier, participation in recycling programs increases. Consumers have already adopted the habit of keeping caps and labels on packaging before disposal after years of education to increase the practice, and it would be counterproductive to change this approach now given the high recovery rate of attached caps and labels by material recovery facilities. To ensure the correct recyclability determination of components that are intended to be reattached to a recyclable packaging, PCPC proposes adding language to Section 18980.1 to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.

b. Small Format Packaging

PCPC has consistently advocated for clarification on the recyclability of small packaging (two inches by two inches). Packaging plays a vital role in ensuring the safety of cosmetic products as discussed earlier. It is the first critical step to protecting product formulas from contamination and degradation. Packaging material and structure are critical to maintaining product integrity. Material selection, including small packaging, is dependent on “fit for use,” a metric that determines the effectiveness and functionality of a packaging material. Plastics specific to cosmetic and personal care products provide benefits that other types of packaging materials may not be able to achieve and do not pose the hazard and environmental issues caused by other materials. Companies must

consider a wide variety of technical specifications when determining packaging designs, including helping consumers dispense and apply products appropriately, continuing to overall consumer safety and satisfaction, often resulting in smaller packaging. Increasing minimum size thresholds or restrictions may disproportionately affect cosmetic brands, especially those already investing in recyclable designs.

For recyclability determinations for components that are less than two inches by two inches in size may not be considered recyclable due to their small size and current processing limitations with material recovery facilities. However, these same components are recyclable when designed to be reattached to the larger recyclable packaging, pursuant to APR Design Guides.

In the Draft Covered Material Categories Reporting Guidelines, released in June 2025, CalRecycle included a “size sorting potential” assessment for small packaging which referenced the APR Design Guide as a technical standard. This incorporation is both appropriate and aligned with best practices, as the APR Design Guide reflects the operational realities and equipment capabilities of modern materials recovery facilities (MRFs). Specifically, this methodology provides a function-based assessment of sortability, accounting for packaging form and construction, rather than relying solely on arbitrary physical dimensions such as size thresholds. By considering the actual performance of materials within automated sortation systems, this approach enables a more accurate classification of covered materials based on their real-world potential for recovery and market viability.

PCPC encourages CalRecycle to formally adopt and consistently apply the APR design guide standards throughout the implementation of SB 54. Doing so would promote regulatory clarity, incentivize packaging design for recyclability, and reduce the risk of misclassification that could limit the capture of recoverable materials. The use of technically grounded and operationally validated criteria—such ss those found in the APR Design Guide—is essential to ensuring that the regulatory framework supports both environmental outcomes and practical feasibility for producer. The cosmetic and personal care product industry is directly impacted by the recyclability determination of small packaging, as many products fall into this category (lipstick, eyeliners, mascara, etc.). If the covered material list states and the regulations penalize small packaging by either declaring they are potentially not recyclable or not providing exemptions, then by 2032 numerous cosmetic and personal care product producers will not be able to sell these products into the state of California.

Small-format categorization should reflect current best practices in recycling design. Where small packaging can be demonstrably sorted and captured, the regulations should allow a performance-based pathway rather than relying solely on dimensional cutoffs. The Association of Plastic Recyclers’ SORT-S-02 “sorting potential” method provides a validated procedure to assess capture of small items. If CalRecycle intends the defining criterion to be functional performance in MRFs, SORT-S-02 is the appropriate test to determine inclusion of small packaging that can be sorted and recovered. CalRecycle should incorporate use of SORT-S-02 in the regulations, for

example in Section 18980.2.5, so that small items proven sortable can be deemed recyclable and categorized into the appropriate CMCs. This approach improves capture, aligns with technological advances in sortation, and avoids excluding sortable items based solely on size.

Conclusion

PCPC appreciates the opportunity to provide feedback on the proposed regulations for SB 54. We look forward to continuing to engage with CalRecycle to support the success of SB 54 implementation. We welcome the opportunity to discuss our comments and share relevant information with CalRecycle.

Response to O-46-11

CalRecycle rejects this comment for the reasons stated in response to comment O-39-5 and B-11-4.

Comment O-46-12

Exhibit 1: **APR Discussion Brief** on "How Plastic Components are Recycled with Plastic Packaging & Requested Changes to SB54 Detachable Component Definition

HOW PLASTIC COMPONENTS ARE RECYCLED WITH PLASTIC PACKAGING & REQUESTED CHANGES TO SB 54 DETACHABLE COMPONENT DEFINITION

The Association of Plastic Recyclers (APR) represents over 80% of the processing capacity for post-consumer plastic packaging in North America. Our members include the businesses that recycle most of the PET, HDPE, LDPE, and PP plastic packaging after it has been collected by California's curbside and CRV recycling programs. This includes five California-based processors (reclaimers) of post-consumer recycled plastics, as well as dozens of California-based businesses throughout the value chain of plastics recycling.

APR has spent 30 years working with recyclers, producers, and the entire supply chain to design plastic packaging, including plastic packaging components, to be compatible with recycling processes. When components are designed to be recyclable and recycled, we can create a system where residents can simply put the entire plastic package into the recycling bin and the entire package--including attached plastic components--can be effectively sorted and recycled by MRFs and plastic reclaimers.

As the voice of plastic recyclers, APR is focused on how the SB 54 requirements can effectively and efficiently drive higher recycling rates for plastic packaging to reduce plastic pollution. Unfortunately, APR is deeply concerned that the proposed definition of detachable components under the SB 54 revised rules (released August 2025) will treat all components as distinct parts, and not as part of the base packaging. This will lead to lower recycling rates. **APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base**

packaging. This includes differentiating when the component is routinely removed by the consumer and routinely re-attached by the consumer prior to recycling.

PROBLEM: If all plastic components are put in separate EPR fee categories than the base plastic packaging, this will • Conflict with design standards and best practices • Lower recycling rates • Distort the producer fees • Create more consumer confusion • Promote poor design choices

Examples of plastic components on plastic packaging

The following table identifies common examples of how plastic components are used by consumers and how the consumer may recycle these components. The components in the green rows are commonly recycled today as part of the base packaging. In other cases, components are more likely to be recycled separately from the base packaging. There are still some cases in which it is unclear if there is sufficient data to know how consumers are recycling these components.

Examples of plastic components on plastic packaging and how they are commonly recycled by the consumer*

Plastic component types Plastic product examples Typical recycling pathway Components not typically removed for use Shampoo bottle cap or pump Body lotion cap or pump Cleaner bottle sprayer Rigid container with hinged lid (e.g. salad box) Bucket handle Adhered label Recycled with original packaging Components typically removed and re-attached for recycling Screw-on bottle caps Screw-on jar lids Screw-on detergent cap Recycled with original packaging Components typically removed entirely from package and not reattached Tear-away pouch top Yogurt foil lid Recycled separately Components that may be removed and may be re-attached Snap-on lids Non-screw on dispenser cup To-go cup lids More data needed on consumer behavior and MRF sorting

** Please note these examples only apply to plastic packaging with plastic components. This is not reflective of plastic components used on non-plastic packaging such as straws attached to drink cartons.*

The above examples illustrate that there are many common plastic packaging components that are recycled today along with the base packaging. **It is critical that the Covered Material Categories reflect how consumers are actually recycling the products.** This is why the definition of detachable components must differentiate when components are attached or re-attached by the consumer for recycling.

CONCERN 1: CONTRADICTS BEST PRACTICES OF DESIGNING COMPONENTS TO BE RECYCLABLE WITH ENTIRE PACKAGE

Plastic components can and should be designed to be recyclable when attached or reattached to the base packaging. CalRecycle already recognizes the importance of

product design for plastic packaging in SB 54. Further, SB 343 (Allen, Chapter 507, Statues of 2021) specifically references the APR Design® Guide as the tool to address how components affect the recyclability of plastic products:

PRC 42355.51: "(3)A product or packaging shall not be considered recyclable in the state unless the product or packaging meets all of the following criteria, as applicable: (A) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers…"

Statute requires producers to be compliant with the APR Design® Guide because the Design® Guide evaluates components as part of the entire packaging. See the diagram below to demonstrate how the APR Design® Guide assesses all the product design features including components, inks, colors, sizes, additives, and more. This means it would be contradictory for CalRecycle to use the current definition of detachable components because it would classify all components as distinct parts when best practices look at these components as part of the base packaging. **This current definition is at odds with the leading design standards already recognized in California law.** The definition of detachable component must recognize that some components are successfully recyclable and recycled as part of the base packaging.

Figure 1: APR Whole Package Assessment includes product components

CONCERN 2: LOWERS RECYCLING RATES

In addition to the examples in the chart on page two, here are two common ways plastic components can be effectively recycled as part of the plastic product when properly designed for recyclability.

Example 1: Caps on plastic bottles. APR's model bale specs have endorsed caps on bottles since 2011. APR Design standards ensure that the caps can either be separated from bottles during the recycling process and recovered for recycling (e.g., caps on PET bottles), or are sufficiently compatible with the main bottle packaging (e.g., caps on HDPE bottles). Please see more information on caps in the plastics recycling process here.

Data shows that California consumers are in fact putting caps back on the bottles. In 2025, the PET Recycling Corporation of California (PRCC) conducted a bale sort that found that over 78% of bottles collected through the CRV program had the cap attached, and 57% of bottles processed at MRFs had caps on bottles prior to baling.

Example 2: Design-compatible pumps and sprayers. Pumps and sprayers often contain a small metal spring that is very problematic to sort out during the plastic recycling process. APR's Design Guide recommends plastic-only pumps and sprays, and there are over 60 variations of APR approved designs for sprayers and pumps that

a company can use to ensure the entire container and pump/sprayer are fully recyclable. Proper design eliminates the need for the consumer to remove any pump or sprayer, and instead, allows the consumer to simply put the entire container in the recycling bin. Plastic recyclers can then fully recycle the container and pump, leading to higher recycling rates.

CONCERN 3: DISTORTS EPR FEES

The statute requires the PRO to set fees that reflect the *"Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material…."* This means producer fees, as based on the Covered Material Categories (CMCs), are required to reflect the actual costs of recycling and should reflect how plastic components are currently managed. For example, plastic caps on PET plastic bottles are collected and recycled today as part of the PET bottles. The costs collect and sort PET bottles are based on recycling all of the components together as a single unit. Similarly, the plastic reclaimers' costs to recycle a bale of PET bottles include the routine operational steps of separating the caps for recycling, along with any other non-PET "floatable" material.

To base the EPR fees on the actual costs, the PRO must consider how products are actually recycled, which means differentiating between components that are attached or re-attached for recycling. **Treating attached and re-attached components as part of the entire packaging unit is the most accurate reflection of the actual recycling costs of managing these components based on how they are recycled today.**

CONCERN 4: INCREASES CONSUMER CONFUSION

When all the attached or re-attached plastic components are designed to be recyclable with the product, recycling is easier for California residents. One of the overarching principles of SB 54 is to streamline, standardize, and simplify plastics recycling for residents to increase participation. This means **moving toward a future where there is less onus on the resident to intentionally remove any plastic components prior to recycling.** The role of the resident is to simply put the plastic package into the recycling bin, and then, with proper packaging design, the full product can be effectively recycled into new products.

If components are all considered separately, then it may lead to more cases of when the resident is instructed to remove parts for recycling. This moves in a contrary direction to the statute goals. Components that are already recyclable when attached or re-attached should be incentivized, not treated the same as components that must be removed and recycled or disposed separately. There are too many nuances around how components are handled by consumers and how they flow in the recycling to simply set one baseline for all materials. **APR strongly recommends CalRecycle differentiate between component types in its definition and CMC guidance and incentivize those that can be recycled as part of the base package.**

CONCERN 5: PROMOTES POOR DESIGN CHOICES

APR anticipates several significant problems caused by charging EPR fees based on separate components with two examples provided here:

Scenario 1: Counting separate components may result in larger lids that use more plastic
If a producer must consider the screw-on lid as a separate and distinct component, then the producer may need to design the lid to be recycled separately from the container. Since smaller format plastics are more challenging to recycle, the producer would be incentivized to make the lid larger so it could be more effectively sorted by the MRFs. For example, a plastic jar lid (e.g., peanut butter jar) could be expanded to 3" or 4" width, or increased in height to 3" or more, to increase recyclability as a standalone component. This change in lid size will increase the amount of plastic being used in product design, which is contrary to the statutory goals.

Scenario 2: Moving to metal caps will result in less recycling.
If the plastic cap is considered a separate category and has a different fee than the plastic container, then producers will look for ways to reduce their fees on the cap itself. Because metal typically has lower EPR fees than plastics, producers would have a financial incentive to move toward metal caps. While this might sound like a good way to reduce the number of plastic components, it has many unintended consequences. Metal components are the number one contaminant on PET containers. Small pieces of metal are extremely problematic in the plastic recycling system because they are extremely challenging to separate and degrade the quality of the recycled content. If more companies move to metal caps, it will have several negative impacts, including less recycled plastic and lower quality of recycled content. In addition, small metal caps are challenging to recycle because of their size and because they contain a plastic lining on the inside of the cap. By contrast, plastic caps are recyclable today on bottles. Moving toward more plastic-lined metal caps would be a huge step backward and would create more problems rather than solve problems.

Moving forward

APR recognizes that one of the goals of SB 54 is to reduce plastic waste from small components, and the subsequent need to quantify the number and types of plastic components. However, the goal to count all components should not undermine recycling efforts, and we believe there is a way for the state to set the definitions to both quantify the number of components and ensure components are effectively recyclable and recycled.

APR requests CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging.

Response to O-46-12

CalRecycle rejects this comment for the reasons stated in response to comment O-39-5.

O-47: RethinkWaste (i.e. South Bayside Waste Management Authority) (Noam Elroi)

Comment O-47-1

On behalf of RethinkWaste, we appreciate opportunity to participate in CalRecycle's regulatory process to aid the implementation of Senate Bill 54 (Allen), also known as the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Below are comments on Draft Regulations released August 19, 2025. Some of the comments listed below we mentioned in our letter submitted in June of 2025, in response to draft regulations released in May of 2025. Several of our concerns persist, in addition to new issues that have come to our attention.

RethinkWaste (i.e. South Bayside Waste Management Authority) is a joint powers authority of eleven public agencies (Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo and West Bay Sanitary District) in San Mateo County. Currently, we serve approximately 420,000 residents and 11,000 businesses and have been a leader in the delivery of innovative waste reduction and recycling programs since our formation in 1982. Additionally, we own and manage the 16-acre Shoreway Environmental Center facility, located in San Carlos, which receives, handles and transfers all the collected trash, recyclable and compostable materials in our service area (about 440,000 tons per year).

Response to O-47-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-47-2

1. <u>Risks to Revenue and Problematic Reimbursements from Producers to Local Jurisdictions</u>

a. §18980.1 (a)(2)

i. RethinkWaste has a unique perspective on this issue as public agency that also operates a materials recovery facility (MRF). The definition of alternative collection risks undermining the existing legal framework around the exclusivity of our franchise agreements and the right of our franchised hauler to charge generators to collect discarded franchised material. If alternative collection is allowed to interfere with the

current stream of material flowing through curbside collection to our MRF, it would undermine the entire economic structure upon which our MRF was financed.

RethinkWaste receives fees for each ton of material entering our Shoreway facility, in addition to revenue made from selling recyclable material. Alternative collection interferes with or draws material away from our current curbside collection risks decreasing our revenue from franchise fees, material sales, and accurate diversion numbers. This decreased revenue would have to be made up in garbage collection rates. There are pre-existing diversion rates we are mandated to hit, which is much harder to track if collection is dispersed without centralized coordination. Finally with alternative collection, we would have no methods to track those tonnages and materials to ensure they are properly recycled or disposed of. This process would also directly undermine the financial bond covenant responsibilities our agency has made in our facility's debt financing which could put us out of compliance. Managing our current (presumed future) debt obligations is a critical component of our core financing planning, and we cannot allow this to happen.

To ensure that local government collection programs are not disrupted, alternative collection programs should not be implemented without approval of the relevant local government. Local governments should retain the right to be the primary sponsor of an alternative collection program, or to designate that responsibility, if desired. Otherwise, lack of coordination with the current local government offerings jeopardizes the revenue streams that fund operations, shifting costs to ratepayers.

Response to O-47-2

CalRecycle rejects this comment for the reasons provided in response to comment B-29-2. Also, regarding local jurisdictions' right to be the primary sponsor of an alternative collection program, CalRecycle rejects that suggestion because Public Resources Code section 42051.1(c)(3) and, by extension, section 18980.8(a) of the proposed regulations already plainly require PRO plans to explain how plans will leverage, rather than disrupt, existing solid waste infrastructure and collection programs. Similarly, PRC section 42051.1(c)(4) requires plans to be consistent with restrictions under state and local laws and existing franchise agreements. Those restrictions on PRO plans reflect the Legislature's intent that PRO plans account for the commenter's concerns over alternative collection programs. Moreover, CalRecycle necessarily will consider those plan requirements when deciding whether to approve plans and assessing compliance with the Act. Therefore, the requested changes are neither necessary nor appropriate.

Further, the statute does not support a rule under which local jurisdictions could prevent implementation of alternative collection by withholding their consent. To the contrary, PRC section 42051.1(l) provides the conditions under which the PRO must rely on curbside collection. Under section 42051.1(l)(1)(C), the curbside collection provider's agreement is one of those conditions, so that the lack of such agreement would mean implementation of non-curbside collection is

appropriate pursuant to PRC section 42051.1(k). The suggested change to the proposed regulations would read the local jurisdiction's agreement into section 42051.1(k) as a condition precedent to alternative collection. In combination with section 42051.1(l), that interpretation would effectively empower local jurisdictions to overrule a PRO's plan for ensuring that materials get collected despite not being collected by a local jurisdiction. That is not a reasonable interpretation of statute. Moreover, the Legislature's choice to refer to the curbside collection provider's consent in PRC section 42051.1(l), but not 42051.1(k), makes clear that it did not intend consent to be an element of the latter.

Comment O-47-3

b. **§18980.8(g)(1)**

i. The proposed regulation adds a date (January 1, 2023) before which costs would not need to be reimbursed; however, adding a date without further context and clarification is counter to the intent of SB 54, which is to make local governments whole for the investments they have made in diverting the packaging and foodware waste stream.

We do not expect the Producer Responsibility Organization (PRO) to fund every investment our local jurisdiction has made. However, there are many instances in which existing and previous capital investments, such as trucks and sorting systems, will need to be leveraged to implement new SB 54 requirements. For example, a portion of an existing sorting line should be covered if that sorting line is processing new SB 54 materials that it wasn't before. There are established mechanisms to apportion such costs. If this is not addressed, well-meaning early adopters like RethinkWaste are penalized and actual costs related to covered material collection, transporting, and sorting will not be reimbursed.

Response to O-47-3

Comment rejected. The commenter asserts that certain costs incurred before January 1, 2023, are among the costs to be funded by the PRO. For the following reasons, no change is appropriate in response to this comment. To the extent the commenter recommends that costs incurred before passage of SB 54 be reimbursed, that contravenes the plain text of the statute and the Legislature's intent. It is not possible for costs incurred before passage of SB 54 to have been made for the purpose of complying with it. As the following provisions make clear, the statute only concerns those costs, not earlier ones:

• PRC section 42040(b)(2)(B): "It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations."

• PRC section 42051(b)(2)(B)(ii): "[Independent Producers are responsible for] [f]ully cover[ing] the costs associated with implementing this chapter to the same

extent as any other producer participating in a PRO based on the producer's share of covered material."

• PRC section 42051.1(g)(1): "The plan shall include a process for determining and paying the costs that will be incurred by local jurisdictions . . . and others under this chapter."

• PRC section 42051.1(j)(1)(B): "[The plan must fund] [c]osts associated with this chapter incurred by local jurisdictions."

These statutory provisions, in particular the Legislature's statement in section 42040(b)(2)(B) that SB 54 was intended to make local jurisdictions whole for "new costs," consistently relate only to costs incurred for purposes of SB 54. Those purposes did not exist before the law's enactment, so no costs incurred before then could possibly be relevant. CalRecycle therefore rejects this suggestion.

Comment O-47-4

c. **§18980.8(g)(4)**

i. Local jurisdictions do not have the financial flexibility to assume debt under the vague guarantee of "reasonable" periods for making determinations of covered costs and issuing payments. Bond market investors require more specificity in this language. Especially if we are required to begin collection of Covered Material Category (CMC) materials so promptly, we need more certainty as to when these costs will be reimbursed so that we can begin the transparent and structured process of public fiscal planning. Because of this, we strongly request that reimbursement timelines should be established in regulation.

Response to O-47-4

CalRecycle rejects this comment for the reasons stated in response to comment B-29-3.

Comment O-47-5

d. **§18980.8(g)(6)**

i. The establishment of performance-based reimbursement only stands to hurt operators like ourselves and those that have already made the investments that enable circularity. SB 54 clearly states that haulers and local governments are to be fully reimbursed for the costs associated with implementing increased diversion, not that they are to be reimbursed based on their ability to fulfill the ambitions of the PRO.

Allowing payment based on performance risks haulers and MRF operators making good faith investments in improved systems and then not being made fully whole because unrealistic diversion rates were not hit, likely because of factors out of their control. Performance-based reimbursement should either not be allowed or should clearly be

separated in regulation as an option that haulers and local governments can opt in to. Overall, reimbursement should be based on the cost of investments, as SB 54 itself states.

Response to O-47-5

Comment rejected. Section 18980.3.2(g)(6) unambiguously states that a performance-based approach must be optional. They must be in addition to a claims-based approach described in the preceding paragraphs.

Comment O-47-6

2. <u>Compostability</u>

a**. §18980.3.3, § 18980.4.**

i. Article 4, § 18980.4 suggests that bioplastics may only be sent to end markets where they completely breakdown. Along with the clarifications in Article 11, §18980.11.1, recent changes seem to suggest that if there are no viable composting end markets that can break down bioplastics in their current system, then local jurisdictions can apply for an exemption. We greatly appreciate this newly noted flexibility, should that be the case.

We also appreciate the update to the standards for products labeled compostable. The connection to the standards of the National Organics Program (NOP) through the Public Resources Code is very important for the realities of the California compost market. However, we would like to emphasize that products that are not made of NOP-compliant inputs do not have responsible end markets in California, as almost all commercial composting operations adhere to the NOP standards. This should be considered when giving exemptions for a lack of end markets.

Response to O-47-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment urges CalRecycle to consider the NOP standards and commercial composting operations when giving exemptions, such comment does not relate to the proposed regulations or present rulemaking process; as such, no response is necessary.

Comment O-47-7

3. <u>Arbitration Costs</u>

a. **§18980.8 (h)(4)(E)**

i. The current proposed language states that arbitration costs are split evenly and attorney's fees are paid individually. This creates a very unlevel playing field, allowing the PRO to make unfair reimbursement determinations because of public agencies' lack of financial ability to see lengthy and expensive arbitration through. Jurisdictions simply

do 4. 5. i. not have a profit margin out of which they can pay for extensive legal fees. The goal of SB 54 was to make governments whole for their processing of materials made by producers. The proposed regulation language splitting arbitration cost is contrary to the spirit of SB 54,

Response to O-47-7

CalRecycle rejects this comment. Section 18980.8(h)(4)(E) ensures that local jurisdictions and recycling service providers can never be burdened with paying more than half of the arbitration fees. Because the PRO and Independent Producers can only achieve the requirements of statute if local jurisdictions and recycling service providers undertake the necessary steps to improve collection and other infrastructure to achieve the requirements of PRC section 42050, there is adequate incentive for them to ensure that binding arbitration results in those necessary steps being taken. Furthermore, given that incentive, there is corresponding incentive for the PRO to agree to a different fee split for binding dispute resolution that the parties mutually consider appropriate; the parties would be free to agree, for example, that the PRO will reimburse all dispute resolution fees, provided that the local jurisdiction or recycling service provider take certain actions, along with the other reimbursed costs. Taken together, these mechanisms disincentivize unreasonable cost disputes, minimize the need to engage in dispute resolution processes to begin with, and protect against the commenter's concerns. While, as a general matter, the investments and costs incurred pursuant to SB 54 are to be covered by the PRO, disputes over what those costs are cannot reasonably be characterized as those costs themselves. Without clear instruction from the Legislature to insulate a party from the costs of resolving disputes, CalRecycle cannot interpret statute as authorizing it to shift all such costs on to the PRO.

CalRecycle further rejects the implied suggestion to shift attorney's fees to the PRO because, as a matter of statutory interpretation, the intent by the Legislature to shift such fees onto either party generally cannot be inferred.

Comment O-47-8

4. <u>Clarification on Compliance Definitions and Responsibility</u>

a. **§18980.11(a)&(b), §18980.11.1**

i. The current regulations still lack clarity as to what would count as a violation; would a jurisdiction be considered compliant if a website or brochure indicates collection acceptability but a cart/bin decal or graphic, which takes more resources and time to update, still shows the material as not accepted? Section 18980.11(b) simply states that a covered material is considered included in a local jurisdiction's program if the jurisdiction "collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities." How is "collects" defined?

Additionally, this section states that a jurisdiction shall not be required to establish a viable end market. We deeply appreciate this delineation. However, additional clarity in the penalties and enforcement section stating no penalty can be imposed on a local jurisdiction or recycling service provider for the lack of a viable end market would go a long way to assuage fears of fines and violations for conditions that recyclers and jurisdictions did not create.

Response to O-47-8

Comment rejected. The phrase "the local jurisdiction or recycling service provider collects the covered material" is plain on its face, and "collect" cannot reasonably be interpreted as anything but the act of physically obtaining materials from those who discard them. Moreover, the proposed regulation is clear that the obligation of a local jurisdiction or recycling service provider is to physically collect and transfer certain covered materials for the recycling purposes, not merely educate the public on how to discard the covered materials. In other words, the local jurisdiction or recycling service provider must facilitate physical collection and then transfer them for processing, not for disposal in a landfill. This provision does not address the predicate acts necessary to maximize efficiency of the program. Statute contemplates the latter being addressed through the PRO plan, which must fund education efforts "to improve the preparation and sorting of covered material" and "improvements to collection . . . and other infrastructure necessary to achieve recycling rates." Lastly, no clarification is needed concerning penalties and enforcement because section 18980.11 cannot reasonably be interpreted to state that a local jurisdiction or recycling service provider could face penalties merely because there is a lack of viable end market. The statute and the proposed regulations make it unambiguous that the requirement is to include covered material categories that must be included pursuant to the covered material category list that CalRecycle publishes, and section 18980.11(b) makes clear that satisfying that requirement does not require transferring collected material to responsible end markets directly. When including the material (as that concept is described in section 18980.11(a)) is not possible, the local jurisdiction or recycling service provider would qualify for an exemption, and there would be no violation.

Comment O-47-9

5. <u>Date Local Jurisdictions Must Collect Recyclable and Compostable Covered Materials</u>

a. **§18980.11(a)**

i. We appreciate clarifications in section 18980.11 regarding the date by which jurisdictions are required to collect materials on the Covered Material Categories (CMC) list and the timeline for compliance in response to future CMC updates. However, the timeline for when jurisdictions must begin collecting materials under the PRO plan (beginning upon its approval) does not acknowledge that jurisdictions will need, and are entitled to under SB 54, funding to implement changes to align with the plan. We may

need agreed-upon funding from the PRO plan to even begin necessary upgrades for increased collection. Additionally, we will not know exactly which materials on the CMC we are responsible for, as opposed to other PRO-run programs being responsible for, until the plan has been approved. We recommend providing a one-year phase in of the collection requirement, or at least the enforcement of it, to allow time for jurisdictions to adjust acceptability lists and add required messaging and infrastructure to sort those new materials. A one-year phase in would align with Section 18980.11(c) which gives one year for jurisdictions and service providers to collect materials when there is a change to the CMC list.

Response to O-47-9

Comment rejected. Delaying the effectiveness of PRC section 42060.5(a) statewide would overcompensate for the compliance challenges that that provision imposes. Instead, statute (PRC section 42060.5(b)) and the proposed regulations (section 18980.11.1) address the commenter's concerns more efficiently, through the availability of exemptions: To the extent complying with section 42060.5(a) is impracticable because of delay in funding to which the local jurisdiction or recycling service provider is entitled, the local jurisdiction may obtain an exemption. Moreover, because of the ambitious statutory requirements placed on the PRO, it has significant incentive to establish efficient means for providing adequate funding. Accordingly, a statewide delay in effectiveness of PRC section 42060.5(a) is unwarranted.

Comment O-47-10

6. <u>Enforcement, Compliance, and Corrective Actions</u>

a. **§18980.13 (b), §18980.13.1, PRC §42081 (a)(1)**

i. The current proposed regulations subject local jurisdictions and recycling service providers to SB 54 enforcement, including penalties of up to $50,000 per day for each covered material category that is not included in a local collection program. We greatly appreciate the work that has been done on the extension and exemption process; nonetheless, the scale of the proposed penalties is extreme – five times higher than those included in SB 1383 – and local jurisdictions are not the target for responsibility nor enforcement under SB 54. This is in direct conflict with the intention of SB 54 to make jurisdictions whole for the costs to recycle and compost covered materials.

We recommend that CalRecycle clarify that any fines to local jurisdictions would be graduated, meaning that the upper fine amount is the maximum that would be assessed and implemented only after other compliance assistance steps and smaller fines were imposed by the department.

Response to O-47-10

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and

42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction or recycling service provider, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant local jurisdiction or recycling service provider consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction or recycling service provider will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-47-11

We take very seriously our mission to provide innovative waste reduction and diversion management through responsible and cost-effective programs that promote environmental sustainability in our communities. We understand how important these regulations are to the successful implementation of SB 54, and the comments made above are done so in the spirit of helping all parties achieve those goals. We greatly appreciate your consideration of our comments, which were all made with the ratepayers of our service area in mind.

Response to O-47-11

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-48: California Retailers Association (Sarah Pollo Moo)

Comment O-48-1

October 7, 2025
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 Director Heller:

The California Retailers Association (CRA) appreciates the opportunity to provide comments on CalRecycle's proposed regulatory text in the formal rulemaking period for California's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

CRA is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, on-line marketplaces, restaurants, convenience stores, supermarkets and grocery stores, chain drug and specialty retail such as auto, vision, jewelry, hardware and home stores. The California Retailers Association works on behalf of California's retail industry, a driving force of California's economy, with over 400,000 retail establishments, an annual gross domestic product of $330 billion and one fourth of California's total employment.

The retail industry is committed to the goals of SB 54, has made investments in sustainable practices and appreciates the opportunity to participate in the rulemaking process for SB 54. The California Retailers Association's President and CEO Rachel Michelin is an appointee to the SB 54 Advisory Board and serves as an ex-officio member of the Circular Action Alliance (CAA) Producer Responsibility Organization (PRO) board furthering the retail industry's commitment to moving towards a circular economy. As such, retailers are deeply invested in ensuring this groundbreaking extended producer responsibility (EPR) program for creating a more circular economy for plastics and packaging is successful both for producers, local governments and, most importantly, consumers.

Below, CRA summarizes our continued appreciation for the work CalRecycle has done on the regulations to date as well as some areas of concern and questions remaining as the regulations get close to their final form.

We look forward to ongoing dialogue and we are happy to make our subject matter experts available to answer specific questions or provide additional information that may be useful as CalRecycle moves forward with finalizing the SB 54 regulations.

Regulations Continue to Move in the Right Direction

The California Retailers Association supports and appreciates CalRecycle's consideration of the impact on affordability that these regulations will have on everyday consumers, especially given the ongoing uncertainty with the Trump Administration's tariffs and myriad of extended producer responsibility and product stewardship programs that exist in California, nationwide and tglobally. The most recent version of the SB 54 regulations reflects these concerns. We thank the entire CalRecycle team's ongoing collaboration with all stakeholders on this important issue. Similar to the last version, this latest draft of the regulations continues to show vast improvement in streamlining and ensuring affordability is a top priority.

As was included in our June 2025 comments letter to CalRecycle, key components of the regulations that make the SB 54 statute implementable for business without greatly raising costs include the provisions for advanced recycling, which is critical for the future success of EPRs in California including SB 707, the Responsible Textile Recovery Act of 2024, which mandates that apparel and textile producers participate in a recycling and recovery program, making them responsible for managing their products throughout their lifecycle, including collection, repair and recycling. This is the nation's first EPR law specifically for textiles and its success depends on the ability to utilize advanced recycling technologies.

CRA members are committed to the environmental goals of SB 54 and appreciate the time taken to craft a collaborative and effective regulatory framework. This demonstrates California's leadership in addressing plastic pollution and advancing sustainable recycling practices.

Remaining Concerns with Draft of SB 54 Regulations

I. Definition of Producer – The definition of Producer remains overly complex and could lead to a lack of clarity by the regulated community as to which party should be considered the Producer. Most importantly, to simplify reporting obligations, **all single-use food service ware, regardless of whether it is unfilled / empty, should be the responsibility of the food service ware manufacturer**.

Otherwise, it adds significant complexity because food service ware suppliers do not know how their items will eventually be used. That may already be the intent of the regulations, but it's not clear based on the organization of the Producer definition. A proposed redline of Subsection 17(B) of 18980.1 that would make the distinction clearer is proposed below.

Proposed redline:

(17)(B)
(i) For Packaging, t~~T~~he terms "product that uses covered material" and "product using the covered material" refer to a good that uses covered material. Empty packaging materials not yet used by a good are not "single-use packaging" ~~or otherwise "covered~~

~~material"~~ under the Act, such that a person is not a producer merely because they manufacture, sell, offer for sale, or distribute such materials.
(ii) For Plastic Food Service Ware, ~~A~~ product ~~good~~ uses covered material if ~~its packaging is covered material or if~~ the good itself is plastic single-use food service ware and thus constitutes covered material. ~~Empty packaging materials not yet used by a good are not "single-use packaging" or otherwise "covered material" under the Act, such that a person is not a producer merely because they manufacture, sell, offer for sale, or distribute such materials.~~

Response to O-48-1

Comment rejected. CalRecycle declines to adopt the commenter's proposed change because it would not be a substantive change and would not add clarity to the regulation. With or without the proposed change, it is equally clear that the regulation states nothing with respect to food service ware that is sold unfilled or empty. Nor would the change have the effect the commenter intends (that "all single-use food service ware . . . should be the responsibility of the food service ware manufacturer"). Statute would not permit that outcome, in any event, because manufacturers are not necessarily producers under Public Resources Code section 42041(w).

Comment O-48-2

II. Compostability Definition – SB 54 looks to AB 1201 (Ting – 2021) for the definition of compostability. While we appreciate your decision to delay the implementation deadline by 18 months for compostable material to meet the National Organic Standards (NOP) under AB 1201, the California Retailers Association needs confirmation that SB 54's definition of compostable will track AB 1201, as extended by CalRecycle.

Response to O-48-2

Comment rejected. No change to the proposed regulations is necessary to address the commenter's concern because any reference to Public Resources Code section 42357(g)(1)(B) necessarily encompasses the recognition in that provision that CalRecycle may delay its effective date. In other words, Public Resources Code section 42357(g)(1)(B) governs eligibility to be labeled "compostable," and the proposed regulations do not purport to give that provision legal effect in the SB 54 context that it doesn't have standing alone (i.e., in the labeling law context).

Comment O-48-3

III. USDA/FDA exclusion – The California Retailers Association supports an outright exclusion for **raw protein packaging**. Rather than requiring a separate exemption application to be submitted, packaging for raw protein should be explicitly excluded under the proposed SB 54 regulations due to the food safety considerations.

Response to O-48-3

Comment rejected. The statute does not grant CalRecycle general authority to single out types of packaging and grant per se exemptions in the regulations. Nor would codifying such an exemption in a regulation be prudent; in the event that a material-specific exemption becomes no longer necessary or appropriate, it could not be withdrawn without the extraordinary effort of a formal rulemaking. Lastly, even if there is not a federal law or regulation that would, pursuant to section 18980.2(a)(2), result in raw protein packaging not being considered "covered material," applying for an exemption pursuant to Public Resources Code section 4060(a)(3) or (4) does not present an unreasonable barrier, especially considering CalRecycle can grant such exemptions on a class-wide basis.

Comment O-48-4

Additionally, in Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware (a) (4) (A-B): Convenience Standard puts unnecessary financial and administrative burden on retailers to manage statewide reuse collection and distribution for all producers. The California Retailers Association requests CalRecycle provide clarity on the basis for the distance requirements and a cost/benefit consideration for determining the distance. CRA recommends CalRecycle consider alternatives based upon population density/return volumes. Retailers delivering other producers covered reusable materials by delivering directly to consumers should not be responsible (logistically or financially) to recover other producers reusable packaging.

Response to O-48-4

CalRecycle rejects this comment. The only suggested change to the proposed regulations is to revise 18980.2.1(a)(4)(A) and (B) so that it is based on "population density/return volumes." Regarding population density, the commenter does not explain how the proposed regulations might be based on them. In any event, declines to take an approach considering population density because it is unrealistic to expect businesses (those that would be "producers" under Public Resources Code section 42041(af) with respect to packaging or plastic food service ware if it were single-use) to conduct demographic evaluations to determine how to establish reusability. With respect to "return volumes, the commenter does not explain how the proposed regulations might be based on them, such as what threshold might be used and how "return" is relevant at all to 42041(af)(2), which concerns reuse by consumers. Moreover, the statute does not require any particular mandatory rate of return, nor does it clearly authorize CalRecycle to establish one or set forth any considerations for CalRecycle to do so. Lastly, the commenter's assertions that the regulations place burdens on retailers to recover "other producers [sic] reusable packaging" is unfounded. Neither the statute nor the proposed regulations purport to require retailers or any entity at all to participate in reuse systems.

Comment O-48-5

IV. Baseline – The baseline concept in CalRecycle's proposed SB 54 regulations is confusing. There seems to be an inherent conflict between setting a static baseline using 2023 data and the statutory provision that acknowledges that businesses will continue to grow and that further reductions may be needed (Section 42057(b) and (h). The California Retailers Associations requests clarity from CalRecycle on this issue.

Response to O-48-5

CalRecycle rejects this comment. This comment asserts that a "baseline concept proposed" in the proposed regulations is confusing but points only to statutory provisions, not regulatory ones, as presenting a conflict. The comment, therefore, raises an objection to statutory provisions, not regulatory ones. Moreover, the cited statutory provisions are unambiguous, and the commenter fails to explain what "inherent conflict" they present. The "static baseline" based on 2023 is a statutory requirement under Public Resources Code section 42057(b), not one CalRecycle proposes or can modify via regulation, and section 42057(h) is a statutory provision that, by its nature, cannot be implemented via regulation currently. The latter has no effect until 2030, when CalRecycle must assess whether new source reduction requirements are necessary to ensure that the source reduction requirement under Public Resources Code section 42057(a) (25 percent by 2032) will be satisfied while allowing business growth. To the extent setting those new requirements must be implemented via regulations, it is not possible to do so currently, and the commenter does not explain its implied suggestion to the contrary.

Comment O-48-6

V. Malus Fees – Section 42053(e)(6) allows malus credit if producers include on-pack recycling / disposal instructions. The California Retailers Associations requests clarification from CalRecycle that a QR code is sufficient to qualify as "clear and accurate disposal, recycling ... instruction."

Response to O-48-6

Comment rejected. The comment does not address the regulations themselves, suggest changes to them, or raise objections related to the rulemaking process. Instead, the comment requests that CalRecycle respond to a question about specific statutory terms not addressed in the regulations, so no response is required. Even if the comment could be construed as concerning any proposed regulation, CalRecycle declines to make any change because the cited statutory text is clear on its face: Public Resources Code section 42053(e)(6) unambiguously refers to actions that improve consumer sorting and disposal. The language cited by the commenter is plain on its face, and presents an example of such actions, not an express limitation on what such actions may be.

Comment O-48-7

VI. State Audit – The California Retailers Association requests clarity on the rights for the State of California to conduct an audit. Is it typical for regulations not to specify a timeframe with constraints on how far back CalRecycle can audit. Specifically, in Article 13 of the proposed SB 54 regulations: Enforcement Oversight by the Department and Administrative Civil Penalties, Section 18980.13.

Compliance Evaluation and Determination

- *Can clarification on the audit timeline be added? Ex: CalRecycle has authority to audit anything from the past XX years? This way, the regulated community can ensure there is access to all data going back to a certain date and make sure a third party is keeping producers' data aligned as well.*

Response to O-48-7

CalRecycle rejects this comment. To the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required. To the extent this comment recommends clarifying the timeline for audits by CalRecycle, no further clarification is necessary. The proposed regulations are consistent with the requirements of the Act, and no change is necessary to the implementation or enforcement of the Act. PRC section 42080(a) authorizes CalRecycle to perform audits of producers and a PRO. Sections 18980.6.8 and 18980.7.7 of the proposed regulations implement this requirement in part by specifying the recordkeeping requirements of producers and a PRO. In particular, sections 18980.6.8(d) and 18980.7.7(d) of the proposed regulations provide that all required records must be available for inspection by CalRecycle and maintained by the producer or PRO for at least three years. Therefore, the proposed regulations are already sufficiently clear as to the timeline of records that must be maintained and made available for an audit by CalRecycle. No further change is necessary.

Comment O-48-8

VII. Categorically Excluded Materials – The California Retailers Association recommends amending Section 18980.2 to reduce unnecessary administrative burdens to individual producers when packaging formats/applications run into federal preemption or requirements that would make the packaging out of scope. Class wide exemptions should not need individual producer submissions, which would only emphasize duplication and add excess cost to producers with no added benefit, which will also only increase the costs on consumers.

VIII. Exclusion of Certain Types of Packaging – The California Retailers Association requests CalRecycle ensure in section 18980.2.2 that intended use is considered for the durability and reuse exemptions. Commercial users and consumer users are two different use standards. Five years of use for consumers may not translate to five years

of industrial use. Warranties for consumer use do not need to stand up to industrial/commercial use.

Response to O-48-8

Comment rejected. To the extent the comment concerns any provision of section 18980.2 other than (a)(2) no change is necessary because those provisions impose no "submission" is requirements; they concern express exclusions in statute from the definition of "covered material" and are self-executing.
Regarding section 18980.2(a)(2), CalRecycle rejects the assertion that requiring a submission from producers is an "unnecessary administrative burden." The burden is narrowly circumscribed and is consonant with the significant effect of any determination that packaging is not covered material, including the risk that such determinations are incorrect.
Regarding section 18980.2.2, CalRecycle rejects the proposal, which is only vaguely stated. It is not clear what change the commenter proposes so that "intended use is considered for the durability and reuse exemptions." That section does not create a "durability exemption" or a "reuse exemption," anyway. It concerns packaging used for long-term storage described in Public Resources Code section 42041(e)(2)(F) and components that are of de minimis weight or volume. Regarding long-term storage, the durability requirement (18980.2.2(a)(3)(A)) expressly does consider intended use, and a warranty is identified as sufficient, but not necessary, for satisfying it. The reference to a "reuse exemption" is inexplicable because section 42041(e)(2)(F) is not about reuse, which is achieved pursuant to criteria listed in Public Resources Code section 42041(af) and is addressed in section 18980.2.1 of the proposed regulations. The long-term storage packaging exclusion concerns packaging that would otherwise be considered "single-use" and "covered material" because it is used only with the good with which it was acquired.

Comment O-48-9

IX. Evaluations of Covered Material and Covered Material Categories; Section 18980.3.4. Independent Third-Party Validation for Postconsumer Recycled (PCR) Content – The California Retailers Association recommends CalRecycle ensure that if and when testing or certification bodies are required that the most possible options for the global supply chain are allowed. CRA recommends CalRecycle start broad and only narrow if entities prove they are not satisfactory. The speed at which this process is moving does not allow for perfection. CalRecycle should consider defining the industry standard testing methodology and lab certifications requirements as opposed to specifying a single entity and their partners as the only option.

Response to O-48-9

Comment rejected. The commenter's proposal does not appear responsive to the substance of section 18980.3.4, which does not concern when or if "testing or certification bodies are required." Instead, it establishes parameters that an independent party entity must meet if a producer responsibility plan proposes

relying on it, instead of the Association of Plastic Recyclers (APR), as the "similar third party approved by the department" described in Public Resources Code section 42057(a)(2)(B)(i). Given that function, CalRecycle cannot discern what it would mean to implement the recommendation to "start broad and only narrow if entities prove they are not satisfactory." The commenter also recommends that the proposed regulation does not "specif[y] a single entity and their partners as the only option," but the proposed regulation does not do so. The proposed regulation recognizes APR as mandated by statute but otherwise does not specifically limit any other options.

Comment O-48-10

X. Remaining General Concerns

The California Retailers Association requests that CalRecycle allow producers to rely on certifications or letters of guarantee from raw material suppliers, packaging manufacturers and vendors for a near-to mid-term compliance and evidence of Chemical, Design for Recyclability and PCR content compliance. Testing and Certification schemes need time to develop within the global packaging industry to moderate duplicative testing and certification costs to California consumer products.

CRA also continues to be concerned about California's inconsistencies with EPR and product stewardship program fee requirements on receipts.

Under the proposed SB 54 regulations, retailers in California are not permitted to list an EPR fee as a separate line item on receipts or invoices for packaging. This is inconsistent with other EPR and EPRlike programs in the state and throughout the country creating a confusing patchwork of receipt requirements for consumers and business as well as compliance burdens, which will ultimately increase costs that could trickle down to consumers.

SB 54 specifically prohibits companies from passing EPR fees directly to consumers as a separate line item on receipts or invoices. This means retailers and producers must absorb the cost of EPR fees into their overall pricing, rather than itemizing it for the consumer at the point of sale. SB 54 includes a unique provision not found in other EPR laws including Colorado, Oregon and Main.

With other EPR Programs in California such as the Covered Electronic Waste Recycling Fee or the Mattress Recycling Charge, the law does require or allow these fees to be listed separately on receipts. For example, with the e-Waste Recycling Fee retailers must collect and may list the fee separately on receipts for covered electronic devices. Under California's mattress recycling program, the recycling fee must be shown as a separate line item on invoices and receipts.

While this fee requirement under SB 54 is in statute and cannot be changed within the regulatory process, the California Retailers Association would like to highlight these inconsistencies that will create more compliance costs that both businesses and

consumers will have to bear. In some programs, retailers and producers must add the fee on the receipt for "educational purposes" for the consumer while SB 54 requires the opposite. Education is important and we should be educating consumers in a myriad of ways on SB 54 and the other EPR and stewardship programs that are currently operating for various products being sold in the state, but we need to find harmonization and consistency in California so businesses and ultimately consumers do not pay the price for a burdensome and ultimately costly patchwork of laws governing California's product recycling goals.

Finally, the California Retailers Association continues to be concerned about the need for harmonization of material class, type and covered materials across the states and the corresponding liability concerns without that harmonization. Colorado is the model for most retailers having to comply with different packaging EPRs across the country. CRA requests an exemption of materials where it is difficult to change the material type due to the material being regulated or needing specific packaging designs. We support the exemption of any materials covered by any other EPR type program and encourage consistency on producer liability definitions. Legislation varies in language relative to "sell it into the state" or "sell it to the consumer" as well as import status. Harmonizing across in scope materials and across states relative to responsibility would ensure more accurate compliance. We also ask for producer liability for retailers not extend to national brands where retailers have limited ability to influence.

We appreciate the opportunity to share our comments on the proposed regulatory framework for SB 54 in the formal rulemaking stage of California's landmark packaging EPR Program as well as concerns and suggestions to improve certain sections for retailers to ensure affordability and the effective implementation of the law. We remain ready to work with CalRecycle to implement SB 54 and lead the nation and world, as this monumental policy decreases plastic waste and moves California closer towards a circular economy and sustainable waste management system.

Response to O-48-10

CalRecycle rejects this comment. First, CalRecycle rejects the commenter's proposal concerning certifications and guarantees because it cannot discern what the commenter means by "chemical, design for recyclability and PCR content compliance." Covered material must be "recyclable" (or compostable) by 2032 under Public Resources Code section 42050(b) according to the standards set forth in Public Resources Code section 42355.51(d). The concept of "design for recyclability" does not appear in statute. Likewise, a producer need not incorporate PCR to comply with their obligations under the statute. To the extent the commenter intended to propose that certifications issued by independent third-parties or guarantees by manufacturers and venders should temporarily excuse a producer from their compliance obligations, CalRecycle rejects that proposal. That proposal is, in effect, a request for a new exemption. The exemptions provided pursuant to Public Resources Code section 42060(a)(3) and (4) (addressed in 18980.2.4)—in particular, 42060(a)(3), which allows for a phase-in plan—are sufficient to address scenarios where a producer asserts

"new-to [sic] mid-term compliance" with any statutory requirement

Furthermore, to the extent this comment makes general recommendations concerning the EPR structure and fees, the proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. First, this comment objects to the prohibition on fees being passed on to consumers as a separate item on a receipt or invoice. However, as recognized by the commenter, this prohibition is explicitly established and required by the Act itself. See PRC section 42053(a)(1). Therefore, CalRecycle has no authority to modify or waive this requirement in the proposed regulations. Second, this comment recommends that the implementation of the Act be harmonized with other states. However, this comment does not recommend any specific changes to the proposed regulations that are within CalRecycle's authority. The comment recommends broad exemptions for certain materials and all materials that are covered by any other EPR program, but it does not identify any way in which the proposed regulations' implementation of the existing exclusions set forth in PRC section 42041(e)(2) and exemptions set forth in PRC section 42060(a)(3) through (5) are insufficient. Rather, the proposed regulations, including sections 18980.2 through 18980.2.4, already clearly and adequately implement the various exclusions and exemptions established by the Act in a manner that is consistent with the relevant statutory provisions. CalRecycle does not have any authority to exclude or exempt materials beyond those exclusions and exemptions that are established under the Act. Finally, this comment recommends preventing producer liability for retailers from extending to national brands. PRC section 42041(w) establishes the tiered criteria for identifying a producer under the Act, and CalRecycle has no authority to impose a limitation on PRC section 42041(w)(3) that otherwise has no basis in the text of the Act. Therefore, no change is appropriate or necessary.

O-49: Oceana (Ashley Blacow)

Comment O-49-1

As California residents, we strongly support the state's 2022 landmark single-use plastic and packaging reduction law, Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), and call on you to ensure the law is implemented in accordance with its intended ambitions. You must ensure that implementing regulations do not undermine the letter and spirit of the law by excluding packaging for over-the-counter drugs and food and agricultural products and allowing harmful and polluting chemical recycling technologies to meet the law's recycling mandates. The growing plastic pollution crisis harms not only our coasts and marine wildlife, but also threatens our health, climate, and communities. SB 54 is an unapologetically bold step to address this plastic pollution and hold producers accountable for the rising costs of managing their waste. If properly implemented, SB 54 will dramatically overhaul how single-use

packaging and single-use plastic foodware will be offered, sold, distributed, and imported in California, and tackle plastic pollution at the source.
California communities spend more than $428 million annually in efforts to clean up and prevent plastic and other litter from entering oceans and waterways. Even a robust recycling system cannot keep pace with the growing production of plastics, particularly single-use plastics, which are often difficult to recycle. SB 54 refocused California's efforts on reduction and reuse while continuing to improve recycling and mitigating harm to vulnerable communities that have long shouldered the health and environmental burdens of plastic production and pollution. As written, SB 54 will spur packaging and foodware innovation in ways that will allow industry growth while reducing single-use plastic pollution in our state.

Unfortunately, the draft regulations conflict with plain language in the law, stifle innovation in packaging design, and undermine the goals of SB 54 to reduce plastic pollution and hold producers accountable for the cost of managing their waste. We are particularly concerned that the draft regulations illegally:
• Propose to exclude packaging for over-the-counter drugs as covered materials with only narrow exceptions.
• Propose to exclude packaging for food and agricultural commodities instead of using the existing exemption process.
• Shift the focus on excluding alternative recycling technologies from hazardous waste production to hazardous waste management and risk-based assessments.

We call on you to ensure packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations and that producers are prohibited from using harmful chemical recycling technologies to meet recycling mandates.

California is at a pivotal moment in the global fight against plastic pollution. California is the fourth largest economy in the world, and the impacts of SB 54 are likely to ripple across the country and around the globe. How the state implements these policies is critical to the law's success. California must not squander this opportunity to lead the way and must not undercut the progress in other states.

Response to O-49-1

CalRecycle partially rejects and partially accepts this comment.

The commenter incorrectly asserts that three features of the proposed regulations are unlawful. Regarding over-the-counter drugs, CalRecycle rejects this comment because section 18980.2(a)(6) correctly interprets PRC section 42041(ee)(2)(A) as not exempting those that are cosmetics. As explained in greater detail in the Initial Statement of Reasons, inclusion of three distinct terms to describe the excluded packaging ("medical products," "devices," and "prescription drugs") establishes that the Legislature intended to exclude medical goods other than just prescription drugs and "devices" (a defined term under the Federal Food, Drug, and Cosmetic Act). Any other interpretation would give no effect to the term "medical products," and a reasonable interpretation of that term

is one that aligns with its common, colloquial understanding: that products that serve cosmetic purposes are not considered "medical products," but items that serve only medical purposes are.

Regarding packaging for food and agricultural goods, the commenter incorrectly asserts that section 18980.2(a)(2) generally excludes such packaging. It only excludes packaging for which there exists an intractable conflict with federal law. CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Regarding the proposal to rely on the "existing exemption process," CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2. Regarding "alternative recycling technologies" and hazardous waste production, CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

O-50: Beta Analytic (Benjamin Kling)

Comment O-50-1

This comment is specifically intended to recommend that the proposed SB 54 implement a definition of the term “biobased” which directly requires the carbon-14 testing method following ASTM D6866 Method B to determine the share of biobased carbon embodied in materials seeking recognition under the program. Biobased content measurements following standards such as ASTM D6866 Method B currently provide critical value to similar existing programs and can play a key role in achieving SB 54’s objectives.

Included here you will find:

Recommendations for SB 54 1
What is Biogenic Testing (Carbon-14)? 5
ASTM D6866 Method B - The Most Reliable Method 6
About Beta Analytic 7
ISO/IEC 17025:2017 laboratory 7
Required tracer-free facility for Carbon-14 8
References 8

Recommendations for SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act

Our recommendation for SB 54 is to incorporate a definition of the term “biobased,” which is consistent with the definition used by ASTM D6866 and requires direct biobased content testing following ASTM D6866 Method B for any biobased materials seeking recognition under the law. This would create consistency with similar initiatives throughout the federal government, particularly the USDA’s BioPreferred® Program, and would help CalRecycle achieve SB 54’s goals of reducing petrochemical pollution from plastics and packaging.

Since SB 54 includes “aliphatic biopolyesters” in its definition of the term plastic (42040 (t)), it chooses not to regulate biobased materials and bioplastics separately from traditional plastics. By doing so, CalRecycle fails to make the decarbonization benefits of biobased plastics available to California’s transition away from petrochemicals. This decision benefits traditional petrochemical plastic producers by failing to make more sustainable alternatives available to consumers, and even further by communicating to California consumers that CalRecycle considers fossil and biobased materials to be equally sustainable. This directly compromises SB 54’s ability to achieve its intended outcomes.

Beta recommends that SB 54 should include a specific definition of the term “biobased,” following the ASTM D6866 definition. Including the ASTM D6866 definition would guarantee that only products containing renewable content benefit from the biobased label because it relies on direct testing to verify claims. Products which can prove they embody biobased content should be recognized as a pathway to achieving SB 54’s goals for displacing petrochemicals. Even further, the use of direct testing in this definition would allow CalRecycle to exclusively incentivize the biobased portion of these products. This would also create consistency with the USDA BioPreferred® Program’s 20-year accepted definition of biobased that is sustained by direct product testing under ASTM D6866. 2

The USDA recently issued a major update to the BioPreferred Program, combining the federal procurement and voluntary labeling portions of the program into one unified pathway, which relies on direct testing following ASTM D6866 to demonstrate biobased content. This is an important rule to 3 consider because USDA upheld the importance of the ASTM D6866 definition of biobased, specifically responding to commenters who advocated for the introduction of calculation-based approaches such as mass balance. USDA’s response to those comments said, “The Agency notes that products produced by mass balance methods are not Biobased Products as defined by this final rule. To maintain the integrity of the Label and to prevent diluting public understanding of what the Label means, the Agency must maintain a consistent definition of what it means for a product to be biobased.” It is critical to follow 4 this approach of a consistent definition to make the term biobased meaningful to consumers and guarantee that biobased products are truly providing the decarbonization benefits the term is intended to promote.

The BioPreferred definition of “biobased” should specifically be used to inform Section 18980.6.7(j) on developing a credit for producers who use plastic-covered material derived from renewable materials (included below). Since the goal would be to give this credit only to the renewable portion of products and not materials of mineral or fossil origin, ASTM D6866 testing should be required to demonstrate the renewable content.

(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic-covered material derived from renewable materials.
(1) “Renewable materials,” for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are wholly derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat

Direct biobased testing requirements are the established best practice for determining renewable content under leading public and private incentive programs for biobased products. For reference, ASTM D6866 is required for reporting the biobased content of renewable chemicals, bioplastics and other biobased products under the following prominent programs (please see specific rules hyperlinked):

- The USDA BioPreferred Program requires ASTM D6866 Method B testing for any biobased products, including renewable chemicals, seeking recognition of renewable content. 5
- The EU’s Policy Framework for Biobased, Biodegradable and Compostable Plastics recommends direct Carbon-14 testing as its preferred method for determining biobased products. 6
- Four US states have Renewable Chemicals Act laws which provide incentives for biobased chemical production requiring ASTM D6866 testing: Iowa, Kentucky, Minnesota and Maine. The 2024 bill for a federal Renewable Chemicals Act also proposed to require ASTM D6866 testing, as have several previous versions of the bill.
- The leading biobased product certification programs in the market require Carbon-14 testing to verify biobased content, including TUV Ok Biobased, DIN CERTCO Biobased, UL 9798 biobased content validation, SGS Green Mark, Nordic Swan Ecolabel, Germany’s Blue Angel Ecolabel, Braskem I’m Green™, Leadership in Energy and Environmental Design (LEED) and CertiPUR-US®.
- ASTM D6866 was also the proposed methodology for identifying biobased practices in the 2024 Biomanufacturing and Jobs Act.

In addition to the USDA BioPreferred® Program, we encourage CalRecycle to review the EPA’s proposed Label Program for Low Embodied Carbon Construction Materials.7

This proposed program further demonstrates the importance of recognizing and incentivizing biobased content as an approach to displacing petrochemicals. By failing to recognise biobased materials as a distinct category and incentivizing their use, the proposed draft text of SB 54 would continue to promote the use of petrochemical plastics in these long-term embodied materials. This is particularly relevant to consider because while many of the materials the proposed EPA label would address are difficult to decarbonize and may not be feasible for compostability yet, SB 54 can incentivize the transition away from petrochemicals in these products by including a definition of the term “biobased”.

If SB 54 incorporates a definition of the term biobased, it is critical that materials receiving this designation be required to submit routine direct testing, rather than allow calculation-based approaches such as mass balance. These calculations allow producers to assume that all of their biomass inputs end up in their facilities’ outputs, despite it being well understood in the industry that the input of renewable feedstocks is not the same as the output. Renewable feedstocks will often have different activity than their fossil counterparts and won’t necessarily produce the same quantity of outputs. By basing their 8 calculations solely on production inputs rather than outputs, these methods systematically over-report the renewable share of fuels.

Even further, mass balance calculations allow producers to freely attribute the renewable content of feedstocks among end products, making these operations extremely difficult to audit and creating an environment ripe for greenwashing and fraud. The risk of allowing the mass balance approach can be 9 seen in the case of fraudulent ISCC mass balance certified biofuels, which plummeted the value of European biofuels in June of 2023. Beta Analytic urges CalRecycle to ensure that SB 54 reflects the 10 integrity of the term “biobased” by including direct product testing under ASTM D6866 in its definition.

In August 2024, the US Environmental Protection Agency (EPA) launched a federal action against the mass-balance methodology used in the recycling sector. The Agency notably highlighted concerns about this methodology being used to assess the recycled content of plastics, as it routinely overestimates the actual recycled content of bioplastics, which misleads consumers and does not contribute to the circular economy and decarbonisation goals. This methodology can be used to artificially inflate the recycled content of products to take advantage of incentives and to sell their products at a higher price for the recycled content incorporated into their process. A ProPublic investigation published in June 2024 found that products advertised as 30% recycled through mass balance often contained less than 1% recycled content. Similar concerns were shown by the US EPA as early as 2023, which described the mass-balance methodology as deceptive and advised against promoting it. Following the publication of the federal 11 case, the US EPA updated the methodology for its Safer Choice label, requiring the recycled content to be determined by weight post-consumer, effectively prohibiting the mass-balance methodology from being used to certify products under the Safer Choice program.

This led California Attorney General Rob Bonta to file a lawsuit against ExxonMobil in September 2024, claiming that the oil major "deceptively" promoted chemical recycling as a solution to the plastic crisis, citing their use of mass balance calculations such as ISCC Plus. That lawsuit directly challenges the 12 13 standard's use of ISCC's free allocation method as a system designed to enable greenwashing. This is the same issue facing the biobased products industry from ISCC certifications and associated terminology like "bio-attributable" and "biomass balanced," which are being promoted in other comments for this update to SB 54. The New York Times also recently published a relevant article on the challenges that mass balance presents to the recycling industry, which aligns with the challenges experienced in the renewable products industry. 14

Based on these challenges, ISCC and other calculation-based certifications should not be eligible to apply for designation as third-party certifications under SB 54. The role of major oil and petrochemical companies on the organisation's board of directors should be considered a direct conflict with Section 15 18981 (b)(2), which requires that approved third-party certifications, "[m]ust be independent, impartial, and not have any conflict of interest with respect to granting the certification." This conflict led the New York Times article discussed above to refer to ISCC as a "self-certification system," designed by these influential corporations in the industry. Especially given that the state is suing ExxonMobil, citing the 16 ISCC Plus certification as a deceptive practice, this scheme should not be approved for any purpose, whether for recycled or biobased content.

The issue of free attribution has led industry proponents of mass balance to propose the use of broad terms such as "bio-attributable," and "mass balance biobased," which are specifically intended to allow commercial interests to avoid compliance with the ASTM D6866 definition. By failing to include a 17 definition of biobased, which is tied to direct testing, this draft of SB 54 creates consumer confusion to the benefit of these competing definitions designed to enable greenwashing of fossil-based products. Including the ASTM D6866 definition would clearly communicate to consumers that only the portion of products directly derived from biomass should be considered renewable.

One other important policy to consider for SB 54 in this connection is the EU's Policy Framework for Biobased, Biodegradable and Compostable Plastics. The framework states that, "It is also important to ensure that biobased content is measured precisely. Radiocarbon-based methods should be preferred as their results are robust and their use is widely accepted. Documenting the use of biomass through a chain of custody and attributing a share to end-products through mass balance accounting is a method which is not considered suitable for confirming the actual share of biobased content."18 Even further, under its Packaging and Packaging Waste Directive (PPWD) the European Commission is required to complete a review of the state of bio-based plastic packaging, and to propose legislation by 2028 to create a biobased label, in which radiocarbon verification should be the preferred method to measure their renewable content. SB 54 should use this same approach when incorporating biobased content to

19 ensure products seeking the designation provide real decarbonization benefits and avoid greenwashing from calculations like mass balance.

In summary, Beta urges CalRecycle to include a definition of the term biobased in SB 54, which is tied to routine biobased content testing. Direct test results following ASTM D6866 Method B will be the most effective tool for the program to validate and track the decarbonization of plastics and packaging achieved by the use of biobased content under this policy.

What is Biogenic Testing (Carbon-14)?

Carbon-14 analysis is a reliable method used to distinguish the percentage of biobased carbon content in a given material. The radioactive isotope carbon-14 is present in all living organisms and recently expired material, whereas any fossil-based material that is more than 50,000 years old does not contain any carbon-14 content. Since Carbon-14 is radioactive, the amount of carbon-14 present in a given sample begins to gradually decay after the death of an organism until there is no carbon-14 left. Therefore, a radiocarbon dating laboratory can use carbon-14 analysis to quantify the carbon-14 content present in a sample, determining whether the sample is biomass-based, fossil fuel-derived, or a combination.

The analysis is based on standards such as ASTM D6866 and its international equivalents developed for specific end uses, such as the European standard ISO 16620. ASTM D6866 is an international standard developed for measuring the biobased carbon content of solid, liquid, and gaseous samples using radiocarbon dating. There are also many specific international standards based on the use of direct 20 carbon-14 testing, such as ISO 16620 which is an international standard that measures the biobased carbon content of plastic products, polymers, and additives. 21

Carbon-14 analysis yields a result reported as % biobased carbon content. If the result is 100% biobased carbon, this indicates that the sample tested is completely sourced from biomass material such as plant or animal byproducts. A result of 0% biobased carbon means a sample is only fossil fuel-derived. A sample that is a mix of both biomass sources and fossil fuel sources will yield a result that ranges between 0% and 100% biobased carbon content. Carbon-14 testing has been incorporated into several regulations as the recommended or required method to quantify the biobased content of a given material.

ASTM D6866 Method B - The Most Reliable Method

Carbon-14 is a very well-established method which has been in use by many industries (including the fossil fuel industry) and academic researchers for several decades.

Carbon-14 measurements done by commercial third party testing is robust, consistent, and with quantifiable accuracy/precision of the carbon-14 amount under **ASTM D6866**

method B. The EN 16785 is the only standard that allows a variant of the Mass Balance (MB) method of 'carbon counting' under EN 16785-2. The EN 16785-1 requires that the biocarbon fraction be determined by the carbon-14 method. However, when incorporating this EN 16785 method, certification schemes like the "Single European Bio-based Content Certification" **only** allow the use of EN 16785-1 due to its reliability and the value of a third-party certification. http://www.biobasedcontent.eu/en/about-us/

In ASTM D6866 method B, the carbon-14 result is provided as a single numerical result of carbon-14 activity, with graphical representation that is easily understood by regulators, policy makers, corporate officers, and more importantly, the public. The overwhelming advantage of carbon-14 is that it is an independent and standardized laboratory measurement of any carbon containing substance that produces highly accurate and precise values. In that regard, it can stand alone as a quantitative indicator of the presence of biobased vs. petroleum feedstocks. When carbon-14 test results are challenged, samples can be rapidly remeasured to verify the original reported values (unlike mass balance).

The quantification of the biobased content of a given product can be as low as 0.1% to 0.5% (1 relative standard deviation – RSD) based on Instrumental error for Method B (AMS). This error is exclusive of indeterminate sources of error in the origin of the biobased content, and manufacturing processes. As such a total error of +/-3% (absolute) has been assigned to the reported Biobased Content to account for determinate and indeterminate factors. 22

It is also important that the program should always require ASTM D6866 Method B, rather than allow Method C for any use. Where ASTM D6866 Method B uses the AMS Instrument to measure 14C, Method C uses Liquid Scintillation Counting (LSC). In Method B, the AMS Instrument directly measures the 14C isotopes. However, in Method C, scintillation molecules indirectly absorb the beta molecules that release with the decay of 14C and convert the energy into photons which are measured proportionally to the amount of 14C in the sample. Since Method B directly measures the 14C isotopes and Method C measures them indirectly, Method B is significantly more precise and should be prioritized in regulations. LSC 23 measurements, like those used in Method C, are commonly used as an internal testing tool when samples are limited and accuracy does not need to be extremely high.

About Beta Analytic

Beta Analytic was among the originators of the use of Accelerator Mass Spectrometry (AMS) for the ASTM D6866 biobased / biogenic testing standard using Carbon-14 to distinguish renewable carbon sources from petroleum sources. Beta began testing renewable content in 2003 at the request of United States Department of Agriculture (USDA) representatives who were interested in Beta's Carbon-14 capabilities for their BioPreferred® Program (www.biopreferred.gov). At their request, Beta joined ASTM under subcommittee D20.96. Beta's previous president, Darden Hood, was positioned as a technical contact for the USDA and within 3 months completed the ASTM D6866-

04 standard. The Carbon-14 technique is now standardized in a host of international standards including ASTM D6866, CEN 16137, EN 16640, ISO 16620, ISO 19984, BS EN ISO 21644:2021, ISO 13833 and EN 16785. Carbon-14 analysis can be used on various types of samples (gas, liquids and solids). Beta Analytic continues to be a technical contact for ASTM D6866 with current president Ron Hatfield and is involved with all their latest ASTM D6866 versions.

The Carbon-14 standardized method is also incorporated in a variety of regulatory programs including the California AB32 program, US EPA GHG Protocol, US EPA Renewable Fuels Standard, United Nations Carbon Development Mechanism, Western Climate Initiative, Climate Registry's Greenhouse Gas Reporting Protocol and EU Emissions Trading Scheme.

We are currently technical experts on Carbon-14 in the following committees:

ASTM D6866 (D20.96) Plastics and Biobased Products (Technical Advisor)
ASTM (D02.04) Petroleum Products, Liquid Fuels and Lubricants (Technical Advisor)
ASTM (061) US TAG to ISO/TC 61 Plastics (Technical Expert)
USDA BioPreferred® Program TAC (Technical Advisor)
ISO/TC 61/SC14/WG1 Terminology, classifications, and general guidance (Technical Expert)
CEN/TC 411 Biobased Products
CEN/TC 411/WG 3 Biobased content
CEN/TC 61/SC 14/WG 1 Terminology, classifications, and general guidance (Technical Expert)

ISO/IEC 17025:2017 Accredited Laboratory

To ensure the highest level of quality, laboratories performing ASTM D6866 testing should be ISO/IEC 17025:2017 accredited or higher. This accreditation is unbiased, third party awarded and supervised. It is unique to laboratories that not only have a quality management program conformant to the ISO 9001:2008 standard, but more importantly, have demonstrated to an outside third-party laboratory accreditation body that Beta Analytic has the technical competency necessary to consistently deliver technically valid test results. The ISO 17025 accreditation is specifically for natural level radiocarbon activity measurements including biobased analysis of consumer products and fuels, and for radiocarbon dating.

Required tracer-free facility for Carbon-14

For carbon-14 measurement to work, be accurate, and repeatable, the facility needs to be a tracer-free facility, which means artificial/labeled carbon-14 is not and has never been handled in that lab. Facilities that handle artificial carbon-14 use enormous levels relative to natural levels and it becomes ubiquitous in the facility and cross contamination within the facility, equipment and chemistry lines is unavoidable. Results from a facility that handles artificial carbon-14 would show elevated renewable contents

(higher pMC, % Biobased / Biogenic values), making those results invalid. Because of this, Federal contracts and agency programs (such as the USDA BioPreferred® Program) require that AMS laboratories must be 14C tracer-free facilities in order to be considered for participation in solicitations.

Areas where cross-contamination might occur include but are not limited to; biomedical or nuclear reactors, isotope enrichment / depletion columns, water, soil, plant, or air samples collected near or at biomedical / nuclear reactor sites, medical, industrial, or hazardous waste sites, samples specifically manipulated to study the uptake / fractionation of stable isotopes due to biological or metabolic processes. To learn more about the risks associated with testing natural levels Carbon-14 samples in a facility handling artificially enhanced isotopes please see the additional information provided after this comment.

Response to O-50-1

Comment rejected. The commenter requests modifications to the statute itself, not to the regulations. In particular, the commenter requests that the statute include a definition of the term "biobased." CalRecycle does not have statutory authority to change the statute, however. To the extent the commenter intended to suggest that the proposed regulations include a definition "biobased," CalRecycle declines to do so because, as the commenter acknowledges, the statutory definition of "plastic" (Public Resources Code section 42041(t)) already encompasses material that would be defined as such. In the commenter's own words, the statute "chooses not to regulate biobased materials and bioplastics separately from traditional plastics."

CalRecycle also rejects this comment because the commenter mistakenly asserts that the statute authorizes CalRecycle to regulate whether products can be labeled as "biobased." The statute does not authorize CalRecycle to enforce any California law prohibiting deceptive labeling, and how products are labeled is not a consideration for determining whether covered material complies with any SB 54 requirement. The commenter also appears to suggest that CalRecycle has general authority to "incentivize" products to use certain materials for the purpose of "achieving SB 54's goals for displacing petrochemicals." CalRecycle does not have such open-ended authority.

CalRecycle also rejects this comment because it does not provide the text of the proposed definition of "biobased" for CalRecycle's consideration. Rather, the commenter only refers to another publication (ASTM D6866), which presumably contains that text.

O-51: International Foodservice Distributors Association (IFDA) (Joe Kalmin)

Comment O-51-1

To Whom It May Concern:

The International Foodservice Distributors Association (IFDA) appreciates the opportunity to submit these comments in response to the California Department of Resources Recycling and Recovery's (CalRecycle) proposed regulations implementing CA SB 54, the "Plastic Prevention and Packaging Producer Responsibility Act." (Stats. 2022, ch.75)

IFDA is a non-profit trade association representing businesses in the foodservice distribu-tion industry. Our $400+ billion industry delivers approximately 33 million cases of food and related products to more than one million professional kitchens across America every day. IFDA counts many of its members as leaders in sustainable solutions to plastic and packaging waste.

Foodservice Packaging Overview

The nature of foodservice packaging, or business to business (B2B) packaging, is substantially different from business to consumer facing (B2C) packaging. Foodservice packaging is inherently minimal and optimized only to ensure food safety and prevent food waste. There is no need for additional packaging for product marketing as with B2C packaging. Given these factors in foodservice packaging, the proposed regulations in SB 54 could have the unintended consequence of increasing food waste by risking the structural integrity of the packaging, as producers could look to remove more costly packaging that is necessary to prevent spoilage and damage. This would inevitably lead to an increase in food waste across the State of California at a time when food insecurity is of concern.

Under California's SB 54, foodservice distributors would be required to pay EPR fees on the packaging materials they distribute, even though many companies manage these materials through commercial recycling and diversion programs rather than entering public waste streams. This creates a risk that the industry could be required to pay twice for recycling—once through commercial waste management contracts and again through state-mandated EPR fees—unless the regulations are clarified to exempt B2B packaging or packaging already diverted from municipal systems.

Response to O-51-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it is preface to the commenter's substantive comments and does not suggest a specific change to the proposed regulations or raise an objection to the rulemaking process. To the extent that following portions of the submission suggest specific changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-51-2

Recommendation #1: Exempt Non-Consumer-Facing Sales from Producer Obligations

SB 54 places compliance obligations on “producers,” broadly defined to include brand owners, manufacturers, and, in some cases, wholesalers and retailers. This expansive definition risks unintentionally capturing distributors engaged in B2B transactions—entities that do not control packaging design, branding, or production decisions. These businesses serve as intermediaries, supplying food and related products between manufacturers and commercial buyers such as restaurants and institutional foodservice providers.

Including B2B distributors in the definition of “producer” imposes compliance burdens on entities that lack the operational control necessary to influence packaging choices. This misalignment could divert resources from meaningful sustainability efforts and create unnecessary administrative complexity.

Accordingly, we respectfully request that CalRecycle:

Exclude pure B2B transactions from the definition of “sale” for the purposes of SB 54 compliance (Section 18980.1.1), recognizing that these transactions do not represent final consumer-facing packaging decisions.

This approach aligns with the revised draft regulations’ intent to streamline compliance and reduce administrative burdens. It also reflects the practical realities of the supply chain and ensures that SB 54 targets the entities most capable of driving packaging innovation.

Response to O-51-2

Comment rejected. The commenter suggests that CalRecycle ignore the plain meaning of the word "sale" and narrowly construe it to exclude an enormous range of what plainly constitute "sales," thereby severely restricting the scope of the statute. The commenter offers no basis in statute for that interpretation other than that the definition of "producers" is broad and imposes burdens on certain types of businesses. That definition, however, is set in statute; CalRecycle's interpretation of that statutory definition cannot narrow its scope. See, also, CalRecycle's response to comment O-38-1, which makes similar proposals.

Comment O-51-3

Recommendation #2: Provide Greater Consistency Across State EPR Programs

To reduce complexity and cost for nationally operating producers, we urge CalRecycle to align key definitions and obligations with other state programs—particularly Colorado’s HB 22-1355. These programs appropriately exclude B2B packaging, which typically does not enter residential waste streams and is already managed efficiently through commercial recycling systems.

The current exemption for Specific Material with Demonstrated Recycling Rates (Section 18980.2.3) is difficult for distributors to substantiate, as they are often several steps removed from the recycling process and end markets. Harmonizing California’s

approach with other states will reduce redundant reporting and administrative burdens while maintaining environmental integrity. We encourage CalRecycle to prioritize consistency to support compliance and efficiency across jurisdictions.

Accordingly, we respectfully request that CalRecycle:

a. Align material definitions and scope—particularly with programs like Colorado's HB 22-1355. Doing so would streamline compliance, reduce reporting complexity, and enable producers to make consistent packaging changes that support environmental goals.

b. Exclude B2B transport and tertiary packaging—such as pallet wrap, shipping cartons, and insulated containers—from full reporting obligations. These materials are essential for maintaining food safety and preventing spoilage, which is a critical sustainability priority. IFDA members and their suppliers continually optimize these packaging types for efficiency and reuse, using systems like pallets, totes, and reusable plastic containers (RPCs) to minimize material use and maximize recovery. These materials typically do not enter residential waste streams and are already managed through commercial recycling systems. A simplified reporting approach, consistent with other state programs, would reflect their distinct lifecycle and recovery pathways.

c. Provide clear guidance to delineate producer responsibility for private label versus branded products. Without clarification, there is a risk of double counting or misattribution of obligations. Aligning with national best practices will help ensure fair and accurate implementation.

Response to O-51-3

CalRecycle rejects this recommendation for the reasons stated above and for the reasons stated in response to comment O-38-1, which makes similar proposals. Moreover, the commenter recommends that the proposed regulations "[a]lign material definitions and scope" according to other state laws. However, the only law identified is Colorado's HB 22-1355, without any specific reference to the definitions requiring alignment or how that alignment can be achieved within the confines of the California statute, which CalRecycle cannot ignore or change. CalRecycle notes, moreover, that that Colorado law defines "covered material" very generally as "packaging material," but with a set of exclusions, some of which mirror those in Public Resources Code section 42041(e)(2). To the extent the commenter intended to suggest that CalRecycle incorporate those exclusions, CalRecycle rejects that proposal because it lacks authority to add categorical exclusions with no basis in California's own statute.
Lastly, regarding the request for "clear guidance to delineate producer responsibility for private label versus branded products," the statute and proposed regulations already provide such clarity. As explained in section 18980.1.1, the first step is to designate which brand or trademark as the one relevant under Public Resources Code section 42041(w)(1) and (2). The commenter's suggestion that "private label" products are not "branded products"

is wrong on its face; a "private label" product is necessarily sold under a particular brand and enters the stream of commerce under that brand. Accordingly, section 18980.1.1(c) or (d) would designate that brand as the relevant one. Moreover, even if both manufacturer's brand and private label brand are both associated with the covered material when it is first sold or distributed, 18980.1.1(e) provides the clear framework for how to identify the relevant brand or trademark, including via agreement between the manufacturer and private label owner.

Comment O-51-4

Recommendation #3: Remove Onerous Justification Requirements for Exemption Requests for "Covered Materials"

IFDA supports the inclusion of Section 18980.2(a)(2) in the SB 54 implementing regulations, which categorically excludes from the definition of "covered material" any packaging or packaging components used by a food or agricultural commodity when it is not reasonably possible to use alternatives that comply with federal regulations, rules, or guidelines issued by the U.S. Department of Agriculture (USDA) or the U.S. Food and Drug Administration (FDA).

This exclusion is consistent with the plain language of SB 54, which prohibits imposing any requirement—including recycled content mandates—that conflicts with federal law. The statute explicitly references USDA and FDA regulations relevant to packaging agricultural commodities, microbial contamination, and packaging safety and integrity.

SB 54, through PRC § 42060(b)(2), clearly contemplated the categorical exclusion of packaging governed by USDA and FDA standards. These federal agencies have long-established rules for packaging certain commodities—such as meat, poultry, and produce—that require specific materials to ensure food safety.

Accordingly, we respectfully request that CalRecycle:

Remove the requirement for repeated justification when requesting a "covered materials" exemption (Section 18980.2(a)(2)(B)). Requiring producers to repeatedly justify exclusions for packaging already governed by federal law would be unnecessarily burdensome and disruptive. It could also pose serious risks to public health if producers, distributors, or retailers are forced to use inadequate or unapproved packaging alternatives.

Response to O-51-4

Comment rejected. In effect, the commenter proposes that once material is claimed to be excluded pursuant to 18980.2(a)(2), that exclusion should be permanent, even when CalRecycle determines that the material does not qualify for it. That approach is obviously nonsensical and would reduce section 18980.2(a)(2) to a loophole. The suggestion is also untenable because federal law is subject to change, and materials and packaging technologies, and thus

the means for complying with state and federal law simultaneously, are constantly evolving.

Comment O-51-5

Recommendation #4: Provide More Practical and Achievable Reporting Enforcement Timelines

To support the dual regulatory goals of ensuring compliance while minimizing business disruption, we respectfully urge CalRecycle to reconsider the enforcement start dates and fee reporting timelines for producers under SB 54.

IFDA members have undertaken a comprehensive review of their “covered materials” across California facilities. This process has required significant effort, particularly given the absence of a finalized fee structure, which limits their ability to accurately assess cost impacts. For a low-margin industry like foodservice distribution, understanding these costs is essential to maintaining competitiveness and continuing to serve a diverse customer base—including small independent restaurants, K–12 schools, healthcare providers, and government institutions.

The retroactive cost implications (“look-back” costs) of the current plan will directly affect future-year sales. Additional time is needed to properly evaluate these impacts and make informed strategic decisions that align with both regulatory compliance and members’ commitment to foodservice customer needs.

We appreciate CalRecycle’s ongoing engagement and urge consideration of a phased approach or extended timeline to ensure thoughtful implementation.

Accordingly, we respectfully request that CalRecycle:

Provide earlier visibility into fee rates by material class to help foodservice distributors plan effectively, mitigate cost uncertainty, and avoid abrupt price increases (Section 18980.6.7). Setting and charging fees for products sold more than a year in advance presents significant financial planning challenges.

Conclusion

IFDA appreciates CalRecycle’s consideration of these comments and respectfully requests that the recommendations provided herein be included in the final regulations, recognizing the unique perspectives of various entities within the regulated community.

Response to O-51-5

Comment rejected. The commenter's proposal is that CalRecycle delay enforcement and fee reporting "[p]rovide earlier visibility into fee rates by material class." The commenter does not state what timeline for such visibility they would consider sufficient. In any event, timely reporting is essential for implementation of a producer responsibility plan; delaying reporting would effectively require

pausing implementation of the statute as a whole. To the extent the commenter intended to request that CalRecycle do so, including delaying enforcement of the statute generally, CalRecycle rejects that request because CalRecycle does not have the authority to effectively abrogate the timelines the Legislature established in statute. Moreover, to the extent that compliance presents special challenges, exemptions pursuant to Public Resources Code section 42060(a)(3) and (4) may provide relief and are addressed in section 18980.2.4 of the proposed regulations.

O-52: Nixon Peabody LLP (Chris Schlag)

Comment O-52-1

1. The Small Producer Exemption is Insufficient to Exempt or Accommodate Larger Nonprofit and Charitable Organizations Under SB 54

In enacting SB 54, California's Legislature sought to impose EPR responsibilities broadly on entities with the greatest control over products and their associated packaging.1 Reflecting this intent, SB 54 has limited producer exceptions and identifies a single express exemption for "small producers," in language stating" the department shall exempt producers, retailers, or wholesalers that, in the most recent calendar year, had gross sales of less than one million dollars ($1,000,000) in the state."2

CalRecycle's Proposed Regulations adopt a similarly restrictive approach.3 To qualify as a small producer, an entity must submit an application to CalRecycle demonstrating that its gross sales for the most recent calendar year fell below the $1,000,000 threshold.4 "Gross sales" is defined broadly to include all revenue from business activity conducted in California, not just sales of products containing covered materials.5 This includes retail, wholesale, online, and in-person transactions, as well as other California-based revenue streams. Applicants must also provide detailed supporting documentation (e.g., tax returns, financial statements, or sales reports) to verify their California-specific gross sales.6 If granted, the exemption relieves the producer of EPR obligations for a two-year period, subject to reapplication and updated sales documentation showing maintained eligibility. However, if a producer's California gross sales exceed $1,000,000 at any point, the exemption is immediately revoked, and full compliance is required.7

While this framework is designed to ensure that each covered material has an identifiable, responsible producer, the absence of any exemption or tailored accommodation for charitable, nonprofit, and faithbased organizations presents significant challenges. As currently drafted, the regulations risk subjecting large-scale charitable, nonprofit, and faith-based organizations to the same compliance burdens as major commercial producers, without regard to the fundamental differences in their missions, operating structures, and packaging control.

In particular, the generalized definition of gross sales creates unique difficulties for large charitable organizations. Many such organizations operate at significant scale, distributing food, hygiene products, clothing, and other essential items to Californians in need but do so free of charge or at nominal cost. The first difficulty in assuming that all charities will fall within the small producer exemption is given California's significant population of 39+ million persons, charitable distributions at a nominal or de minimis cost to 39+ million persons can potentially result in "gross sales" over the $1 million threshold, despite no or negative profit to the charity. The second difficulty relates to the definition of "gross sales," as it may include the aggregate value of goods being donated. Either of these difficulties alone may result in these organizations inadvertently exceeding the exemption threshold despite engaging in noncommercial, humanitarian activity. In such cases, high volumes of charitable activity, not business income, could trigger compliance requirements under SB 54.

As yet a third difficulty, nonprofit, and charitable distribution models differ significantly from those of commercial retail and food service establishments. Nonprofit and charitable organizations, particularly faith-based entities, may produce food products or receive donated consumer products, which are then distributed at no or de minimis cost through humanitarian channels to underserved populations. These products may contain packaging that qualifies as "covered material" under the statute, but the nonprofit entity likely had no role in designing, sourcing, or selecting that packaging. The organization acts solely as a conduit, ensuring the goods reach individuals in need.

Assigning producer responsibility to nonprofit entities in such circumstances is inconsistent with SB 54's legislative intent, which is to place environmental accountability on the entities that have decision-making authority over packaging choices and material composition. Imposing EPR obligations on these organizations will also divert resources from charitable missions, while also failing to further the Act's core environmental objectives. For these vary reasons, several other states with EPR programs recognize the unique role of charitable organizations and explicitly exempt them from EPR producer obligations. For instance, Maine expressly excludes 501(c)(3) nonprofit organizations from the definition of a "producer," thereby exempting them from the state's EPR requirements.8 Similarly, Colorado's EPR statute identifies nonprofit organizations as exempt producers,9 and Oregon includes nonprofits within the regulatory definition of "small producer," effectively exempting them as well.10

In California, the potential adverse impact of reporting requirements on nonprofit organizations has also been acknowledged in other regulatory contexts. The California Air Resources Board, for example, has proposed exempting nonprofits from the greenhouse gas ("GHG") emissions disclosure requirements under Senate Bill 253, and the climate-related financial risk disclosure requirements under Senate Bill 261.11 Notably, these exemptions are being considered despite the absence of explicit statutory carveouts for nonprofits—underscoring a broader recognition of the disproportionate burden such requirements could impose on mission-driven organizations. These regulatory approaches reflect a consistent intent to protect

charitable and nonprofit entities from obligations that could divert resources from their core mission and public service objectives.

To ensure SB 54 is implemented in a manner that is both equitable and consistent with its statutory purpose, we recommend that CalRecycle establish a specific exemption or alternative compliance pathway for charitable, nonprofit, and faith-based organizations that distribute goods free of charge or at nominal cost for charitable purposes, regardless of gross sales volume. Such an exemption should apply where the organization is not involved in the production or packaging decision-making process and is either a distributor of donated or humanitarian aid items or is providing items to individuals in need either free of charge or at a de minimis cost.

2. EPR Obligations Should Not Deter Donation Programs

The Proposed Regulations adopt a multifactorial approach to identifying the “producer” responsible for EPR compliance.12 This approach considers a range of factors, including whether the covered material is branded or unbranded, whether it is subject to licensing or intellectual property rights, and the physical location of the manufacturer, brand owner, or licensee. Where no producer can be clearly identified through these criteria, the regulations assign responsibility to the importer or distributor of the material into California.13

While this framework may function in conventional commercial settings, it does not account for the distinct operational realities of nonprofit and faith-based organizations engaged in charitable sales or distribution. These organizations, particularly those with multi-state operations, often rely on complex and donation-based supply chains that differ substantially from traditional manufacturing and retail models. Donated goods, such as hygiene kits, food items, clothing, and emergency supplies, may be produced in one state, stored in another, and ultimately sold, either at reduced or de minimis costs, or freely distributed in California by nonprofits or charitable organizations serving vulnerable populations. These goods frequently pass through a series of non-commercial transfers, with separate entities responsible for manufacturing, repackaging, storage, and transportation at distinct stages of the supply chain. For example, a national nonprofit may receive hygiene kits assembled and packaged by volunteers in one state, which are then collected and shipped in bulk to California and then distributed by various local partners to people in need either for free or at minimal cost.

Crucially, in these models, the nonprofit or faith-based organization that ultimately distributes the goods in California may have no control over packaging design or material selection and similarly may have no legal or commercial relationship with the upstream entities responsible for those decisions. In some cases, additional packaging may also be applied, or the packaging may be modified throughout the supply chain, such as during bulk shipment or localized repackaging, to facilitate final distribution to individuals in need.

Given this operational structure, the fact-intensive nature of the producer identification process and default to the last entity selling or distributing a product with covered material poses a significant compliance burden for charitable organizations. These entities are often unable to trace or verify the origin, branding, or material content of donated packaging, nor are they positioned to assume producer responsibilities under the framework envisioned by SB 54. Nonetheless, under CalRecycle's Proposed Regulations, nonprofits may be deemed the "producer" solely because they are the final entity to handle, sell, or distribute the product within the state. The lack of clarity surrounding the Proposed Regulations' definitions of "producer" and "covered material" within the donation and charitable sales context further exacerbates this challenge. Without explicit exemptions or tailored compliance pathways for nonprofit and charitable organizations, or clear considerations for donated items, charitable organizations face substantial regulatory uncertainty. The prospect of being deemed a producer could also discourage participation in donation-based programs or lead to the reduction or elimination of critical aid operations in California.

The potential impact of these regulations is not theoretical. Many nonprofit organizations operate on limited budgets, rely heavily on volunteer labor, and prioritize service delivery over administrative infrastructure. Imposing the full weight of SB 54 compliance on such organizations may result in significant financial and operational strain. This could, in turn, diminish the availability and reach of charitable assistance, particularly at a time when demand for such services remains high due to ongoing social, economic, and environmental pressures. It is essential that CalRecycle recognize the substantial public benefits these programs provide to Californians. Faith-based and nonprofit organizations are vital partners in delivering food security, disaster response, hygiene services, and other forms of emergency and humanitarian assistance. Ensuring that SB 54 implementation does not inadvertently undermine these services will be critical to advancing both environmental and social equity objectives.

3. Reporting Metrics Do Not Fit Charitable Models

The Proposed Regulations require producers to report detailed metrics, including sales volume, market share, and material types, as part of their compliance obligations. These metrics are structured for conventional commercial supply chains and are fundamentally misaligned with nonprofit and humanitarian distribution models. Unlike commercial entities, nonprofit organizations often do not track the movement of goods using sales-based metrics. Donations are distributed at minimal costs or free of charge and are typically not accompanied by transactional data systems designed to monitor packaging materials, weight, or composition in the manner contemplated by the regulations.

Moreover, nonprofit entities, especially those operating at scale and across multiple states, may not have access to upstream packaging information, and frequently do not control the selection, design, or labeling of the products they receive. As such, they are not positioned to collect or report the kind of granular packaging data required by SB 54's implementing framework. Imposing these requirements on charitable organizations

would create significant administrative burdens, without yielding the type of actionable or accurate information the statute seeks to capture.

It is important to recognize that charitable and faith-based organizations are already committed to environmental stewardship as an integral part of their humanitarian missions. Many have adopted voluntary sustainability practices, including responsible sourcing, waste reduction, and packaging minimization, as a matter of principle. These organizations function as responsible partners in both environmental and social welfare, serving populations that often fall outside the reach of traditional commercial infrastructure. Imposing additional administrative and financial requirements—such as registration, detailed reporting, and Producer Responsibility Organization ("PRO") fees—would necessarily divert limited resources away from charitable programs and toward regulatory compliance and would not necessarily improve packaging material outcomes in this context.

Every dollar spent on compliance is a dollar not spent on food, shelter, hygiene, or emergency relief for
California residents in need. At a time when economic and environmental pressures are increasing demand
for aid, it is critical that California's EPR framework support, not undermine, the delivery of these essential
services. We therefore encourage CalRecycle to revise the Proposed Regulations in a way that alleviates
the compliance burden and administrative on nonprofit and charitable organizations to ensure they are
able to continue distributing goods to populations in need in California and can focus their resources on
supporting vulnerable populations.

4. Requested Clarifications and Adjustments

To address the concerns outlined above and preserve the integrity of California's nonprofit and faith-based relief programs, we respectfully request the following clarifications and regulatory adjustments:

 Exempt Nonprofits and Offer Alternative Compliance Pathways. CalRecycle should explicitly exempt nonprofit, charitable and faith-based organizations from producer designation. Alternatively, at a minimum, CalRecycle should also develop alternative compliance pathways with reduced or waived fees and reduced reporting requirements for nonprofit , charitable and faith-based entities that do not generate profit from the sale of covered materials or lack control or access to upstream packaging data.

 Provide Clarification of EPR Requirements for Donated Goods and Charitable Distribution. CalRecycle should also confirm that goods distributed free of charge through nonprofit or charitable channels are exempt from producer designation under SB 54, particularly when no commercial transaction occurs. This approach is consistent

with the charitable exemptions adopted in other states' EPR programs. In doing so, CalRecycle should clarify that the distribution
of donated goods does not, in itself, trigger producer responsibilities, especially where the distributing non-profit or charitable entity is not engaged in the production, branding, or commercial sale of the item.

- **Consider the Environmental Contributions Already Made by Nonprofit Organizations.** CalRecycle's EPR Program and regulations should acknowledge the value of nonprofit organizations' voluntary sustainability initiatives, including the benefits of donation pathways in meeting goal EPR objectives, and avoid duplicative or excessive reporting compliance obligations that offer minimal additional environmental benefit and may inadvertently result in decreased charitable support for those in need.
- **Producer Assignment Flexibility.** In cases where multiple entities may be involved in the
provision or distribution of donated goods, CalRecycle should allow for flexible producer assignment and explicitly permit nonprofits and charitable organizations to assign producer
responsibility to upstream commercial entities.
- **Grace Period and Technical Assistance.** Nonprofits should be provided with a reasonable grace
period before enforcement of any applicable obligations, along with access to technical assistance
and guidance materials designed specifically for the charitable sector.

We urge CalRecycle to ensure that SB 54 implementation supports both environmental and humanitarian goals, preserving the capacity of nonprofits to serve California's most vulnerable residents. Clarifying exemptions, creating flexible compliance options, and supporting nonprofit participation in a manner consistent with their missions will ensure SB 54 is implemented in an equitable and effective manner.

We remain committed to supporting the successful implementation of SB 54 and believe that clarifying these foundational issues is essential to a fair, effective, and sustainable program. We welcome continued engagement on these matters through public meetings or direct dialogue with CalRecycle to help shape a regulatory approach that aligns with SB 54's intent and supports long-term success.

1 See Senate Bill No. 54; Cal. Pub. Resource Code § 42041(e). See also generally, Senate Bill No. 54 Bill Analysis,
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54. However, SB 54 also excludes from the
definition of "producer" any person who produces, harvests, and packages an agricultural commodity on the site where it was grown
or raised. See Cal. Pub. Res. Code § 42041(w)(4).
2 See Cal. Pub. Res. Code § 42060(a)(5).
3 See 14 CCR § 18980.5.2 (Proposed).
4 See Cal. Pub. Res. Code § 42060(a)(5)(A);14 CCR § 18980.5.2(a)(1)(Proposed).
5 See 14 CCR § 18980.5.2 (Proposed).

6 See 14 CCR § 18980.5 (Proposed).
7 See 14 CCR § 18980.5.2(c) (Proposed).
8 See Maine PL 2021, c. 455, §2.
9 See Colorado's Extended Producer Responsibility (EPR) law (HB 22-1355), § 25-17-713.
10 See ORS 459A.863(32); Oregon Administrative Order No. DEQ-20-2024.
11 See e.g., SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance, CARB (Aug. 21, 2025), https://ww2.arb.ca.gov/sites/default/files/2025-08/SB%20253%20261%20workshop%20slides%208-21.pdf.
12 See 14 CCR §18980.1 (Proposed).
13 See 14 CCR § 18980.1.1 (Proposed).

Response to O-52-1

CalRecycle rejects this comment as the requested changes for additional exemptions and requirements are beyond the scope of the Department's rulemaking authority, and both exceed and conflict with the statutory text and requirements for qualifying as a small producer. See also response to comment O-61-3.

O-53: National Association of Wholesaler-Distributors (Brian Wild)

Comment O-53-1

About NAW and the Wholesale Distribution Industry

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes and national, regional, state, and local line-of-trade associations spanning the $8 trillion wholesale distribution industry that employs over 6 million workers in the United States. Approximately 35,000 enterprises with almost 150,000 places of business in all 50 states and the District of Columbia are affiliated with NAW. Wholesale distribution is a vital business-to-business industry. Wholesaler-distributors purchase inventory (generally from manufacturers), store it in warehouses, break it down into the quantities their customers—generally retailers—require, and repackage and ship the products. Unlike warehouse logistics companies, which simply transport another party’s products, wholesaler distributors purchase inventory, take title to it, and then resell it. Most wholesaler-distributors are small- to mid-sized private companies with limited in-house legal or compliance resources. While they may not be consumer-recognized brand names like their manufacturing and retail partners, they play an essential role in the supply chain. Wholesale distribution contributes roughly one-third of U.S. gross domestic product, making it an irreplaceable link in our economy.

NAW’s Comments in Response to CalRecycle Proposed Action

In March 2025, Governor Newsom declined to adopt CalRecycle’s initial draft regulations citing concerns that the proposed action would impose excessive costs on

businesses and consumers. Instead, the Governor called on CalRecycle to restart the regulatory process on SB 54. CalRecycle's revised draft of the regulations does not resolve these concerns. The issues of complexity and cost presented by SB 54 and the draft regulations remain the same today, which is why instead of finalizing regulations, CalRecycle should recommend that Governor Newsom and the California legislature reconsider SB 54.

There are seven states to date that have passed packaging Extended Producer Responsibility (EPR) laws. As implementation of these laws has begun it is clear there are serious practical and legal concerns with the laws. NAW filed a lawsuit in the United States District Court for the District of Oregon in response to Oregon's law going into effect. NAW's lawsuit challenges the constitutionality of Oregon's Plastic Pollution and Recycling Modernization Act. In addition to the lawsuit in Oregon, regulated entities have raised practical concerns regarding the implementation of the law. Important questions remain as to how the law applies to businesses and the fees that they are being charged.

Similar problems exist with SB 54, and CalRecycle's revised regulations do not solve those problems. This is why California needs to reconsider its approach to a circular economy. Wholesaler-distributors primarily serve the business-to-business marketplace. Wholesalerdistributors offer warehousing, logistics and shipping from manufacturers and producers to retailers, contractors, and other businesses, they should not be classified as "producers" in SB 54. The current SB 54 scheme shifts the burden away from the key decision-makers and instead imposes mandates and fines on parts of the supply chain—such as wholesalerdistributors—that have no control over product packaging decisions, including how packaging is designed, how much is used, or how it can be reduced, reused, or recycled.

Under SB 54, companies are subject to a penalty of up to $50,000 per day for noncompliance. Even more concerning is the Circular Action Alliance (CAA), the recognized Producer Responsibility Organization (PRO) in California, is moving forward with collecting reporting information from employers even though the implementing regulations have not been finalized and a draft program plan is not expected until 2026. While CAA's reporting portal did not open on time, businesses are still required to report their 2023 data by November 15, 2025. This data will be used as a baseline for source-reduction goals and fees for future years. Imposing reporting obligations before regulations are finalized undermines accuracy, unnecessarily burdens businesses with vague standards, including wholesaler-distributors, and risks establishing arbitrary and faulty baselines that could hinder CalRecycle's long-term program objectives.

NAW urges California to reconsider SB 54, while we are generally supportive of the goals of a circular economy this is not the solution.

Response to O-53-1

CalRecycle rejects this comment. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Rather, this comment urges California to "reconsider" the Act. Such reconsideration is beyond CalRecycle's authority. Pursuant to PRC section 42060(a), CalRecycle is required to adopt regulations necessary to implement and enforce the Act and to ensure its requirements are met. The proposed regulations are consistent with this statutory requirement, and CalRecycle has no authority to reconsider a bill that has been passed by the California Legislature, signed by the Governor, and chaptered. Indeed, the commenter appears to acknowledge that such reconsideration is outside of CalRecycle's authority, recognizing elsewhere in the letter that CalRecycle should recommend that the "Governor . . . and . . . Legislature reconsider SB 54." The proposed regulations are consistent with the requirements of the Act and no further change to the proposed regulations is necessary.

O-54: American Forest & Paper Association (Shoshana Micon)

Comment O-54-1

Submitted via SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations Public Comment Form

October 07, 2025

RE: Comments related to SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations Formal Rulemaking

On behalf of the American Forest & Paper Association (AF&PA), thank you for the opportunity to provide feedback concerning the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations.

AF&PA serves to advance public policies that foster economic growth, job creation and global competiveness for a vital sector that makes the essential paper and packaging products Americans use every day. The U.S. forest products industry employs more than 925,000 people, largely in rural America, and is among the top 10 manufacturing sector employers in 44 states. Our industry accounts for approximately 4.7% of the total U.S. manufacturing GDP, manufacturing more than $435 billion in products annually. AF&PA member companies are commited to making sustainable products for a sustainable future through the industry’s decades-long initiative — Better Practices, Better Planet 2030. In California, the industry employs more than 55,000 individuals in nearly 385 facilities, contributes $477 million in state and local taxes, and manufactures more than $23.6 billion in products.

Paper Recycling Works

Paper recycling is essential to our industry’s efforts to achieve important sustainability goals and build a more circular value chain. Paper is one of the most widely recycled materials in America, turning used paper into new, essential products Americans rely on. In fact, more than 2/3 of all paper recycled in the U.S. is turned into new products at

mills nationwide. In 2024, we recycled around 46 million tons, translating to an overall paper recycling rate of 60%-64%.

Paper recycling is also vital to our national supply chain. AF&PA members own and operate more than 100 materials recovery facilities across the country. About 80% of U.S. paper mills use some recycled paper to make new, sustainable products. Our industry is scaling up the use of recycled paper. U.S. mills used 1.29 million more tons of recycled paper to make new products in 2024 – that's 32.7 million tons compared to 31.3 million tons in 2023.

Our industry has prioritized recycling for over 30 years, and we are commited to continued progress. AF&PA members are not just participants in the recycling system, we are helping build and improve it through voluntary industry investments that use more recycled paper, create jobs, and innovate in our U.S. manufacturing processes. During 2019-2025, our industry invested in projects at paper mills that will use over 4.5 million additional tons of recycled paper. Companies built new mills, upgraded old ones, and modernized equipment.

We are concerned that the changes to the regulation do not introduce substantive enough modifications to alleviate the cost burden for consumers. Please find below our feedback regarding the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations.

Response to O-54-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-54-2

Proposed Changes

Definitions

Plastic

The proposed definition of plastic will create unintended consequences when coupled with the commodity bale specifications for paper-based products and the practical realities of how materials are aggregated, sorted, processed, and remanufactured. In statute, the definition of plastics "means a synthetic or semisynthetic material ... that can be shaped into various rigid and flexible forms." This language should exclude materials that lack independent structural integrity and cannot exist as plastic components without being bonded to a fiber substrate. This includes coatings, inks, and adhesives.

The current definition is overly burdensome and will require manufacturers to meticulously track, document, and calculate the trace amounts of plastic coating, adhesive, or ink that comprises a fiber-based package, likely down to the thousandth of an ounce level. Additionally, this information may compromise proprietary formulations. Examples 6 and 7 from the Source Reduction Guidance published by CalRecycle this summer highlights the unreasonable burden currently in place. We recommend that CalRecycle grant an explicit de minimis exclusion for the trace use of these non-fiber elements.

Food Service Ware
AF&PA supports the Foodservice Packaging Institute's (FPI) comments on the definition of food service ware. The term should be defined as "plastic food service ware" rather than the broader term "food service ware" to ensure consistent interpretation and reduce confusion. The food service ware item should also not be referred to as a "good." This creates ambiguity and inconsistency between sections A and B of the definition.

Producer
We support the clarification in the producer definition that "empty packaging materials not yet used by a good are not 'single use packaging' or otherwise 'covered material' under the Act." Similar to the exclusions in Oregon (ORS 459A.863(6)(b)(D) and (E)), we encourage CalRecycle to explicitly mention unconverted paperboard rolls, other immediate substrates (e.g., corrugated sheets), and ancillary shipping materials (e.g., cores, roll wrap, pallets).

Reusable and Refillable
AF&PA agrees with FPI that the definition of "reusable" in Section 102(33)(b)(i) should be updated to reflect the ability of the packaging to be refilled for the same or similar general purpose. However, both definitions still lack criteria for comparing relative environmental performance of "reusable" and "refillable" materials against single-use but recyclable materials. This will create an unfair competitive environment that could result in unintended outcomes, including regrettable substitutions for single-use recyclable materials with a superior overall sustainability profile than "reusable" or"refillable" options. Regulations should strive to avoid overtly picking winners and losers among materials.

Covered Material
The current definition of Covered Material references "substances." The term "substance" is not defined within the draft regulations, and the lack of a clear definition for this term creates significant confusion, especially when applied to end-of-life management. For greater clarity and regulatory certainty, the regulation should either formally define "substance" as it pertains to end-of-life scenarios or, alternatively, replace the term with language that clearly specifies the intended scope such as "material," or "component."

Response to O-54-2

Comment rejected. Regarding the definition of "plastic," the definition is established in Public Resources Code section 42041(t), and the commenter's proposal that it should exclude materials that "lack independent structural integrity and cannot exist without being bonded to a fiber substrate" would require modifying that statutory provision, which regulations cannot do.
Regarding the commenter's proposal for a "de minimis exclusion for the trace use of these non-fiber elements," no change to the proposed regulations are required because they already set forth the criteria that producers may use to determine whether such trace use constitutes a de minimis weight or amount of plastic.
Regarding the definition of "reusable," the commenter refers to "section 102(33)(b)(i)," which is not identifiable in the proposed regulations. Nevertheless, to the extent the commenter's proposal is that items refilled by consumers need not be refilled with the same good, CalRecycle rejects that proposal because the statute expressly permits the good to be different for items refilled by producers (Public Resources Code section 42041(af)(1)(A)) but not for those refilled by consumers (section 42041(af)(2)(A)). Regarding criteria for comparing environmental performance, no change is appropriate because CalRecycle does not have statutory authority to add independent criteria to those set forth in section Public Resources Code section 42041(af).
Regarding the definition of "covered material," no change is appropriate because the term "substance" has a readily discernible denotation and does not introduce any ambiguity in 18980.1(a)(5). The commenter provides no explanation of its claim to the contrary.

Comment O-54-3

Producer Identification

More clarity is needed in the updated Producer Identification section 18980.1.1 (c) on the definition of a manufacturer. The manufacturing of paper relies on complex, cross-border, circular supply chains. Mills create the base pulp and paper for many different products and then that material goes on to one or several converting facilities to become the end packaging product. To comply with reporting of supply data, it is imperative that our members understand to whom in the supply chain "manufacturers" refers. We are concerned that in 18980.1.1(c)(1) "The person who manufactured the goods is the producer, provided that the person is in the state and either owns the designated brand or trademark or is licensed to manufacture the goods" will lead to producer obligation lying with the mills.

As highlighted by FPI, there is significant inconsistency between the producer identification framework for packaging and food service ware. As currently written, the producer identification process for food service ware shifts the designation of producer to the manufacturer of the packaging, rather than to the brand owner associated with the food service ware. This inconsistency will cause confusion and complications for producer reporting and does not align with the legislative intent of SB 54. For both definitions, more clarity is needed on how to appropriately identify the brand owner.

Response to O-54-3

Comment rejected. The proposed regulations use the term "manufacturer," which is used in the statute, in its ordinary sense, which is universally understood (and defined in dictionaries) to refer to the entity that makes a finished good. Regarding the asserted inconsistency between packaging and food service ware with respect to identifying producers, CalRecycle declines to make changes to the relevant provisions for the reasons stated in response to comment O-76-6. Regarding "clarity . . . on how to appropriately identify the brand owner," the identify of the owner of any particular brand is a straightforward legal question requiring no regulatory framework. If the commenter intended to suggest that it is unclear which brand owner is the producer, section 18980.1.1(b) through (e) contains lengthy provisions explaining how to designate the brand as the relevant one for purposes of identifying the producer. The commenter does not explain in what ways that explanation might be unclear, so no further response is required.

Comment O-54-4

Exclusion of Reusable and Refillable Packaging and Food Service Ware

Section 18980.2.1(a) states that packaging and food service ware that meet the requirements to be deemed "reusable" or "refillable" are not covered material under the Act. The goal of this program is to reduce landfilled materials and otherwise manage the end of life of products. There should be a plan for the end of life of the packaging and food service ware that is not single-use but nonetheless will reach an end of use whether through deterioration, obsolescence, safety, rebranding, or other reasons. Without a plan, these products may be landfilled, and the producers should pay dues representative of the burden on the system once the packaging and food service ware meets its end of life.

Response to O-54-4

CalRecycle rejects this comment for the reasons provided in response to comments B-38-3 and B-6-2. Items that are not single-use are not "covered material" regulated pursuant to the Act.

Comment O-54-5

De Minimis

Section 18980.2.2 (b) currently lacks the clarity our industry needs to understand how this addresses the minimal use of adhesives and coatings on packaging that are primarily composed of recyclable paper materials. We urge the department to continue to refine this language, provide additional explanation to the de minimis use of adhesives and coatings, and reflect that clarity within the definition of plastics.

We appreciate the ability of the PRO to request that the Department deem certain components to be of de minimis weight or volume. However, it is important that this determination does not lie with the PRO alone as the arbiter. The de minimis use of

adhesives and coatings should be determined in the regulation. More clarity is required in Section 18980.2.2 (b) (4) on how a notice of violation could lead to a component or groups of components to be determined as de minimis.

Industry wide exemptions should be allowed for de minimis materials. Each company having to prove they qualify adds significant costs and is overly burdensome. If a packaging type receives a de minimis exemption, it should no longer be classified as plastic. Furthermore, we suggest that where there are industry standards, the de minimis threshold should align with that standard.

Response to O-54-5

CalRecycle rejects this comment. Regarding the proposal that CalRecycle provide "additional explanation," the proposed regulations provide detailed criteria that are sufficient to be applied consistently to packaging components; to the extent that stakeholders would benefit from CalRecycle providing illustrative examples of such applications, no revision of the proposed regulations is necessary for CalRecycle to do so. Regarding the "definition of plastics," CalRecycle cannot discern what change to that definition the commenter proposes.

Regarding the request that determinations of when components are considered of "de minimis weight or volume" not be left to the "PRO alone," no change is necessary because the proposed regulations do not have that effect. To the contrary, section 18980.2.2(b)(4) establishes that CalRecycle makes such determinations, regardless of PRO requests submitted to it. Moreover, the commenter's suggestion is internally inconsistent: It both acknowledges that the Department can "deem certain components to be of de minimis weight or volume" but then requests that "this determination does not lie with the PRO alone as the arbiter." The proposed regulations cannot have those effects simultaneously.

The commenter's reference to notices of violation is also unclear; no explanation is necessary because it is self-explanatory that CalRecycle could deem meritorious a defense, in response to CalRecycle's identification of a violation, asserting that components are of de minimis weight or volume.

Regarding industry-wide exemptions, no change is necessary because nothing in 18980.2.2(b) prevents CalRecycle from making determinations applicable industry-wide. In particular, paragraph (4) does not state that CalRecycle's list of "components and groups of components" must refer to those of a particular producer.

Regarding considering "de minimis" components no longer be "classified as plastic," a regulation to that effect would be a nullity because materials exempt under the de minimis exclusion are not packaging and thus not covered material; whether they are classified as "plastic" is irrelevant to complying with the statute.

Lastly, regarding industry standards, regulatory provisions cannot account for them unless they exist, and the commenter identifies no such standard. In any event, the commenter's proposal has the function of law and regulations backwards: An industry standard would only be appropriate if they aligned with

the statute, as interpreted by CalRecycle in 18980.2.2(b). The commenter offers no explanation of why regulations should instead yield to what industry decides what standards appropriately implement statutory provisions.

Comment O-54-6

Exemptions for Specific Materials with Demonstrated Recycling Rates

We have concerns that the current application process laid out in Section 18980.2.3 and 2.4 lacks the flexibility needed to address industry-wide exemption requests. For example, if an exemption is sought for the adhesive lining in cardboard boxes, the process as currently outlined could be read to require each individual company to submit separate applications, resulting in unnecessary duplication of effort and administrative burden. To prevent these inefficiencies and support a more effective implementation of the program, industry associations or the PRO should be able to submit a single exemption application on behalf of all impacted producers for a given material. The ability to make collective exemption requests based on material category should be clarified as permissible under the regulations. The current approach in the regulations makes the exemption process so burdensome as to devalue the exemptions, which is contrary to the legislative intent. The exemptions were a critical piece of the final legislation.

The criteria to qualify for an exemption in Section 18980.2.3(a)(3)(B) that "after being collected, none of the items are commingled with unsorted material collected by curbside programs" is unnecessary. Clean sorted material would not be combined with unsorted material during curbside collection. We suggest that these regulations instead use the statutory language from SB 54 that states that "the covered material does not undergo separation from other materials at a commingled recycling processing facility."

Response to O-54-6

Comment rejected. Regarding flexibility to address industry-wide exemption requests, CalRecycle rejects that proposal because section 18980.2.7 provides for the exact flexibility that the commenter seeks.

Regarding section 18980.2.3(a)(3)(B), that provision is not focused on combination during curbside collection itself but rather generally addresses commingling at any time by programs operated by local jurisdictions or recycling service providers (which are, by definition, are the entities that conduct "curbside collection"). The proposed regulation is CalRecycle's restatement, in clearer terms, of the statutory limitation in PRC section 42041(e)(2)(H). That limitation means that the material must always remain separate from unsorted material from curbside collection.

Comment O-54-7

Evaluations of Covered Materials and Covered Material Categories

Recyclability

Section 18980.3 (a) restricts covered material categories' ability to be considered "recyclable" by requiring that it must satisfy the categorical requirements in SB 343. While we agree with the intent - to ensure that materials considered recyclable have a reasonable probability of being recycled - a careful balance is required. SB 343 is already tipping the scales toward landfilling of recyclable material by placing excessively restrictive requirements on recyclability claims. In the latest "How2Recycle Guidelines for Use" there were significant changes to how fiber-based packaging is being labeled due to SB 343. Several fiber-based packaging formats have been downgraded from "widely recyclable" to "check locally" even though these packaging types pass technical repulpability tests, such as our Voluntary Standard, and are accepted by most mills throughout the U.S. This loss of a label will lead to fiber-based packaging having a higher likelihood of landfilling. Even worse, it could prevent these materials from being sold within the state if they are not determined to be recyclable by 2032. This has far-reaching implications outside of CA. Brand owners and manufacturers will not create packaging specific just for products sold in CA. Instead, CA has a big enough market share that all packaging created for the US market, whether sold in CA or not, will comply with CA requirements. This will lead to the loss of the "Widely Recyclable" label for all impacted fiber-based packaging throughout the U.S., an increase in landfilling of fiber-based packaging, and the loss of a currently robust recovered fiber market for U.S. mills.

Methodology for Recycling Rate Determinations
The weight of fiber is heavily impacted by moisture in a way that other covered materials are not. We recommend that the recycling rate for paper or non-plastic fiber be modified to account for the significant distortion caused by non-fiber elements such as moisture, food contamination, and other materials that increase the weight of fiber. Paper is an unusual material in its capacity for absorbing non-fiber elements in its environment, and without adjustment, the supply of fiber potentially available for recycling would be exaggerated and could introduce substantial inaccuracies in the recycling rate calculations. For example, the ISRI Scrap Specifications Circular (an internationally accepted resource) sets the maximum moisture level of linerboard at 12 percent, meaning one-tenth of the weight of the material could be moisture. More clarity is needed in Section 18980.3.2 (b) (2) (A) how "the weight recycled shall be adjusted to exclude the proportion of the recycled content feedstock derived from materials other than covered material." It is necessary for the fiber industry that moisture, food contamination, and other materials are included in "materials other than covered materials."

It is imperative that the recycling rate is based on the weight of the covered materials sent to be recycled, not on the incoming material weight at a responsible end market. Currently, the language "at the point that the material is sold or transferred by a responsible end market as feedstock" used throughout Section 18980.3.2 lacks the clarity needed to ensure that this is a recycling rate calculation. Without this clarity and as currently written, the recycling rate calculation could instead be a recycling yield calculation. The concept of yield is separate and distinct from the calculation of recycling. Subdivision (ab) of Section 42041 in SB 54 defines the calculation of the

recycling rate as "the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192." To ensure clarity and accuracy in reporting, CalRecycle should use the statutory language of recycling rate from SB 54. dra

Response to O-54-7

Comment rejected. Regarding recyclability, the commenter appears to object to "requiring that [covered material categories] must satisfy the categorical requirements of SB 343" to be considered "recyclable." The commenter offers no legal basis for that objection, which is frivolous: The statute (section 42061(c)) unambiguously incorporates the requirements of Public Resources Code section 42355.51(d) as those that govern whether covered material is "recyclable." The commenter also erroneously suggests that the proposed regulations can cause "loss of a label." How a product is labeled is not relevant to whether any covered material violates the statute's restrictions, and CalRecycle determinations concerning recyclability will not purport to assess liability for deceptive labeling.
Regarding recycling rate determinations, the commenter requests more clarity than provided in section 18980.3.2(b)(2)(A) of the proposed regulations and urges CalRecycle to "use the statutory language of recycling rate from SB 54." Section 18980.3.2(b) does implement that statutory language, which, in any event, expressly authorizes CalRecycle to adopt a "new methodology for calculating the recycling rate by regulation." Also, the commenter misdescribes the recycling rate calculation methodology described in 18980.3.2(b). That methodology does not assess the "incoming material weight at a responsibility end market." Rather, it considers the weight of the feedstock produced by the recycling process as the "weight recycled "(i.e., the "amount recycled" referred to in Public Resources Code section 42041(ab)). No change to the proposed regulation is necessary to address the commenter's concern because 18980.3.2(b)(2)(A), (b)(3)(B), and 18980.3.2(g) provide exactly the flexibility the commenter seeks. Added moisture, contamination, and "other materials" obviously are not covered material from which recycled feedstock was derived (assessed per (b)(2)(A)), nor are they "covered material disposed of" (assessed per (b)(3)(B)), and a producer responsibility plan can propose an appropriate manner of accounting for them.
Regarding the assertion that recycling rate should be based on "the weight of the covered materials sent to be recycled," see CalRecycle's response to comment O-76-21.

Comment O-54-8

Responsible End Markets

Responsible End Market Criteria

Markets for recycled materials are complex and dynamic. Manufacturers in proximity to each other can work together to use each other's waste or by-products, i.e. "incompatible materials," as raw materials to reduce their environmental impact and create a more circular economy. However, the provision in Section 18980.4(a)(3)

requiring an entity to send incompatible materials for further processing assumes that these materials can be processed further and that there is always a cost-effective process to collect, sort, and send the incompatible material to a viable end market. Not all incompatible material may be suitable for further sortation. The current definition of incompatible materials as "covered material that a receiving responsible end market is not designed, permitted, or authorized to recycle, as defined in subdivision (aa) of section 42041(aa) of the Public Resources Code, or does not recycle for any other reason" lacks the clarity that the paper industry needs to meet the requirements of SB 54. It would be helpful to receive further detail on specific materials that meet the definition of "incompatible materials," and if it is facility-based, how and by whom the decision is made. This provision should be removed or edited to include language that appreciates the complexities of the separation requirements and logistics for shipping materials. If this provision is not removed or edited, further information is needed on how Cal Recycle will help develop markets for these "incompatible materials" so that REMs are not penalized.

End Market Identification
We ask that in all requests for information to REMs, such as applications, that the rules to comply with Section 18980.14 "Designation of Trade Secrets and other Non-Disclosable Information" be included.

End Market Compliance Audits and Verification
We are concerned that the requirement in 18980.4.2 (c) (1) that "information that demonstrates a REM met or exceeded its average yield threshold" will be included in the Annual Report pursuant to subdivision (c) of section 18980.9.1. Sharing individual facility yield information negatively impacts each facility's strategic advantage in the marketplace. Instead, we support reference to existing industry standards for recyclability and repulpability. In the Approved Program Plan for the State of Oregon, Circular Action Alliance granted domestic paper mills an exemption for paper yield verification. They came to this conclusion based on input from us, the Technical Association of the Pulp and Paper Industry, and Moore & Associates that overall yield performance in the U.S. is never below 60%. We suggest that CalRecycle adopt a similar yield exemption for domestic paper mills.

The proposed annual compliance audits by an independent third-party in Section 18980.4.2 (a) is excessive and would be prohibitively costly with no corresponding benefit. If audits do occur, they should be prioritized on an "as-needed" basis.

We are concerned by the requirement in 18980.4.2 (b) that a "PRO or Independent Producer shall include the findings of any compliance audit in the annual report. It is imperative that these compliance audits do not include any trade secret or sensitive information.

End Market Development
As currently drafted, there is no limit to the potential investment needed to support end markets. This puts the PRO at unlimited financial liability. There should be limitations

placed on the extent to which a PRO needs to support end markets. We suggest that this limitation be based on the definition of viability in SB 1335 that states that "material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value." The PRO should not subsidize material that fails to meet this test for market viability. Oregon, for example, has stated a limit of societal benefit: "The benchmark for average societal benefit of recycling is $2,017 per ton expressed in 2021 dollars, and will be adjusted for inflation no more frequently than once per year." This would be the maximum that could be spent, in total, on recycling a ton of any material type. This will help ensure that SB 54 is "economically efficient and practical."

Response to O-54-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42041, 42051.1, and 42060, and no change is necessary to the implementation of the Act.

CalRecycle rejects this comment to the extent it recommends removing or otherwise revising section 18980.4(a)(3) of the proposed regulations. See the response to comment O-55-4.

To the extent this comment recommends including the rules to comply with section 18980.14 of the proposed regulations in all requests for information to responsible end markets, no change to the proposed regulations is necessary. This recommendation relates to future requests for information and not to the proposed regulations or present rulemaking process. As such, no response is necessary. In any event, section 18980.4.1(c) of the proposed regulations is clear that section 18980.14 will always apply when a responsible end market provides CalRecycle with records and CalRecycle will continue to communicate that to responsible end markets.

CalRecycle also rejects this comment to the extent it recommends adopting a yield exemption for domestic paper mills. For the reasons described in response to comment O-7-5, the required achievement of the yield requirement is consistent with the definition of responsible end markets and CalRecycle's authority under PRC section 42041(ad). A material-specific exemption from this requirement is not necessary, and it could result in the inaccurate identification of responsible end markets. To the extent this comment is concerned with the release of confidential information, PRC section 42063(c) and section 18980.14 of the proposed regulations adequately ensure that any confidential information will be protected from public release.

To the extent this comment recommends revising the annual compliance audit requirement in section 18980.4.2(a) to an "as-needed" basis, no change is necessary. CalRecycle, in consultation with its Audits Office, has determined that compliance audits should be conducted annually to ensure entities remain compliant with applicable requirements, including those established in PRC section 42041(ad) and implemented in section 18980.4(a) of the proposed

regulations.

To the extent this comment is concerned with the annual report requirement of section 18980.4.2(b) of the proposed regulations, no change is necessary. Such findings can be sufficiently generalized such that no trade secret or sensitive information is revealed and are additionally subject to the protections of sections 18980.6.6(b) and 18980.14(b) of the proposed regulations.

Finally, CalRecycle rejects this comment to the extent it recommends placing limitations on the PRO's need to support end markets. Pursuant to PRC section 42051.1(c)(1), the PRO must describe in its plan how it will meet the requirements of the Act, including how it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050. Therefore, the Act already requires the PRO to describe to CalRecycle how it will maintain low costs in its development of responsible end markets, while still reserving significant discretion to the PRO. The PRO's plan is then subject to CalRecycle's reivew and approval. Section 18980.4.3 of the proposed regulations implements this requirement by further clarifying the scope of the PRO's obligations in terms of financial support as described in PRC section 42051.1(c)(1). Therefore, the proposed regulations strike an appropriate balance between providing the PRO with the necessary discretion to establish and develop its plan pursuant to PRC section 42051.1(c)(1) while still preserving sufficient opportunity for review and oversight by CalRecycle, all in a manner consistent with the intent of the Act. No further change is necessary.

Comment O-54-9

Producer Compliance

We are concerned that the requirements in 18980.5 (d) are too restrictive on producers. Producers that become a participant pursuant to subdivision (b) of that section should have an appropriate amount of time to gather and submit their supply data for CY 2023 rather than needing to supply that data at the time of application.

Response to O-54-9

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1.

Comment O-54-10

Fee Schedule

The charges to participant producers to cover the costs of the environmental mitigation requirements of section 42064 of the Public Resources Code should only be applied to participant producers that produce materials that are targeted by the mitigation requirements. Section 18980.6.7 (a) (1) should be updated to reflect that.

We suggest that the base fee calculation described should include the addition of "non-exempt" as shown below in Section 18980.6.7:

"Article 6 (e)(2)(A) A PRO shall first calculate the base fee for each covered material category applicable to the producer. The base fee for a covered material category shall be equal to the [base fee rate of a covered material category (BFRCMC)] times the [weight of non-exempt covered material of that covered material category sold, distributed, or imported in or into the state within the previous calendar year (WCMSDI)]: BFRCMC x WCMSDI = Base Fee."

Additionally, we suggest deleting "or requires test results" from 18980.6.7 (h) as the requirement for testing seems to imply the material has detrimental environmental impacts. A material might have superior environmental attributes but require testing in a recycling or composting system to ensure compatibility.

The credits to producers in 18980.6.7 (j) (1) should apply to all covered materials, not just plastic. Additionally, "renewable" should be associated with a timeframe of replenishment and credit should only be given to sustainably sourced renewable material.

Response to O-54-10

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42051.1, 42053, 42060, and 42064, and no change is necessary to the implementation of the Act. To the extent this comment recommends revising section 18980.6.7(a)(1) of the proposed regulations to provide that the environmental mitigation surcharge only applies to producers that produce materials that are targeted by the mitigation requirements, no such change is appropriate. PRC section 42064(f) makes clear that the environmental mitigation surcharge must be imposed on all "participants who produce plastic covered material subject to Section 42057"; as such, no further limitation is appropriate or within CalRecycle's authority. To the extent this comment recommends updating the proposed regulations to include the "non-exempt" qualifier in the base fee calculation, no such change is appropriate. As clarified in section 18980.2.4(a) of the proposed regulations, an exemption under that section does not change the obligations of producers with respect to the covered material, such as payment of PRO fees. To the extent this comment recommends deleting "or requires test results" from section 18980.6.7(h), see the response to comment B-47-4. Finally, to the extent this comment recommends applying section 18980.6.7(j)(1) to all covered materials, and not just plastic covered materials, no change is appropriate. The reduced fee established in PRC section 42053(e)(7) is explicitly limited to plastic covered materials. As such, it is neither appropriate nor within CalRecycle's authority to expand the scope of the fee credit awarded under this section to all covered materials.

Comment O-54-11

Source Reduction Baseline Report

We request that the July 1, 2026 deadline for the Source Reduction Baseline Report in Section 18980.9 be extended 12 months to July 1, 2027. Companies need sufficient

time to submit their initial supply reports to provide accurate and reliable data at the level of detail required around plastic components to comply with SB 54. As noted in our De Minimis comments above, producers don't have precise data on the trace amounts of non-fiber elements incorporated into their products. Gathering this information requires extensive coordination across multiple tiers of the supply chain. Additional time enables companies to better understand, interpret, and report on the data required.

Response to O-54-11

CalRecycle rejects this comment, see responses to B-27-2, I-63-15, O-48-5, and O-41-4.

Comment O-54-12

ISO/IEC 17025: 2017 Accreditation

The draft regulations require ISO 17025 accreditation for several different sections: 18980.1, 18980.3, and 18981. While we recognize that ISO 17025 accreditation ensures analytical quality and consistency, it is important to acknowledge that such accreditation is not currently available for a number of industry-developed analytical methods and certification schemes. As a result, mandating ISO 17025 accreditation for all analyses may inadvertently exclude well-established industry protocols and create unnecessary barriers to compliance.

To address this, we strongly recommend that the regulations provide for a reasonable grandfathering period for data generated under existing, non-accredited methods, as well as a phased implementation timeline for the accreditation requirement. This approach would enable producers and laboratories to adapt to the new standards without disrupting ongoing operations or invalidating valuable historical data. Furthermore, the regulations should allow for the continued use of industry-recognized testing schemes where ISO 17025 accreditation is not feasible.

Response to O-54-12

Comment rejected. The accreditation at issue, ISO 17025, is not an accreditation of "analytical methods and certification schemes," but rather an accreditation for testing laboratories that would conduct laboratory analyses. Moreover, even assuming that, as the commenter asserts, the proposed regulations could allow use of "existing, non-accredited methods" and "industry-recognized testing schemes," the commenter does not support that assertion or identify any such methods and testing schemes, so CalRecycle cannot evaluate the appropriateness of incorporating them.

With respect to section 18981, CalRecycle also rejects the more general suggestion of a "phased implementation timeline for the accreditation requirement" for the reasons provided in response to comment B-36-8.

Comment O-54-13

Governance Concerns

As a general matter, our industry has significant concerns about the potential for anti-competitive behavior under the auspices of authority CalRecycle grants to the PRO. It is incumbent upon CalRecycle to exercise diligent oversight, require the highest standards of transparency, and provide for an adequate process and opportunity for stakeholder input on key PRO decisions. Extended producer responsibility is a unique policy concept that allows economically powerful competitors to collaborate and exercise consequential, quasi-governmental powers such as fee-setting, creating barriers to entry and other restraints on market access, and making environmental marketing claims.

Response to O-54-13

Comment rejected. The comment does not address any particular provision in the proposed regulations and only generally asserts discomfort with the EPR model.

Comment O-54-14

Standardized Regulatory Impact Assessment (SRIA)

We are concerned that the results of "Alternative 1: Less Stringent Classification of Plastic Covered Materials" are based on incorrect assumptions. In the reason for rejecting, it is mentioned that "robust recycling infrastructure does not exist for packaging such as plastic-lined mailing pouches and bakery boxes with plastic windows. .... and it is likely they would be disposed due to how difficult they are to recycle." This statement does not reflect the recyclability of polycoated fiber-based packaging and fiber-based packaging with plastic components. We encourage a re-assessment of this alternative that includes the correct assumptions about polycoated.

The following linked data supports the strong and growing market for polycoated fiber-based packaging, via paper cups as an example. A number of large cities, including San Francisco, are accepting paper cups in their recycling bins.
1. FAQs on Recycling Paper Cups for Paper Mills
2. End Markets for Post-Consumer Paper Cups
3. Paper Mill Commitment More resources can be found on the Foodservice Packaging Institute's Paper Cup Resource page, linked here.

Thank you for your consideration of our comments. We appreciate the ongoing collaboration between AF&PA and CalRecycle to advance a sustainable recycling system. We remain available to discuss the feedback herein in greater detail and look forward to your response. Please contact Shoshana Micon, Manager, Recycling and Packaging Sustainability, at shoshana_micon@afandpa.org or Julie Landry, Vice President, Government Affairs, at Julie_landry@afandpa.org if you have any further questions.

Response to O-54-14

CalRecycle rejects this comment. The quoted portion of CalRecycle's justification for rejecting Alternative 1 in the Standardized Regulatory Impact Assessment

(SRIA) leaves out the context provided by the preceding sentence: "There are already systems in place throughout California to recycle plastic containers such as soft drink bottles and milk jugs." Those sentences, taken together, are correct as written. This was recently supported by data presented in CalRecycle's SB 343 Material Characterization Study Final Findings 2023/2024 report, published in April 2025, which concluded that Composite Food Service Paper and Packaging, which includes polycoated fiber-based foodservice packaging, is not collected by jurisdiction recycling programs or sorted into a defined stream by large volume transfer/processing facilities in California.
Regarding the broader packaging category ("fiber-based foodservice packaging") to which the comment refers, no response is necessary because the commenter only provides specific analyses with respect to polycoated packaging.

O-55: Carol Patterson (Carol Patterson)

Comment O-55-1

Electronic submittal: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act 45-Day Comment Period

October 7, 2025

Thank you for the opportunity to provide feedback concerning the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations.

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating for an open and fair marketplace for all materials. Our core members include raw material and machinery suppliers as well as packaging manufacturers, representing approximately 90 percent of the industry. Additionally, a number of distributors and purchasers of foodservice packaging are part of FPI's affiliate membership.

FPI has several members with facilities in California, and many that import foodservice packaging into the state. Our 2021 economic impact study of the foodservice packaging industry estimates that our industry was responsible for $2.1B in direct economic impact and $6.8B in total economic impact within the state.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found here.

We appreciate the time and effort CalRecycle staff have dedicated to preparing the proposed SB 54 permanent regulations. However, we continue to have foundational concerns, particularly regarding the definitions and the proposed approach to food service ware, as well as other areas we have previously addressed in our submitted comments to the Department.

Below is FPI's feedback in response to the proposed SB 54 permanent regulations, focused on the areas of greatest impact to the foodservice packaging industry and intended to support the effective implementation of the law.

Article 1: Definitions

§ 18980.1. Definitions

(a)(8) "Food service ware"

We continue to believe it would be more consistent with the statutory language to define "plastic food service ware" rather than the broader term "food service ware." This approach would more accurately 1 | P a g e Comment box continued from above reflect the terminology used in SB 54 and help support consistent interpretation and application of the definition.

Next, as we understand it, the proposed language in (8)(A) seeks to connect the good and its function as follows: "To be a food service ware item, the good must either necessarily directly contact food when used to serve or consume food or be designed specifically for use in conjunction with food service items when the items are used to serve or consume food." However, by referring to the food service ware items as a "good" rather than a type of packaging associated with direct food contact, the definition still appears to remove the party filling/using the "food service ware" as the producer in (A). On the other hand, the definition under (B) refers to where the covered materials listed are used (per the law) which may obligate the party filling/using the food service ware. This approach creates ambiguity and inconsistency across covered materials and their obligated producer.

To resolve these concerns, we offer the following changes to the definition of "food service ware" below in red.

(a)(8) "Plastic food service ware" *means the ~~goods~~ items identified in subparagraphs (A) and (B) that are added at the point of sale by food service, or other service entities to serve, store, handle, protect, or market food and facilitate the consumption of prepared food. Plastic single-use food service ware is covered material and shall not be considered "packaging" for purposes of this chapter.*

(A) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, and other ~~goods~~ items typically used with food, provided that such

covered materials ~~goods are intended or marketed to be~~ are used, or are customarily used, in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption. ~~A good~~ An item expressly marketed or labeled as not intended for such uses shall not be considered customarily put to such use. To be a food service ware item, the ~~good~~ item must either necessarily directly contact food when used to serve or consume food or be designed specifically for use in conjunction with food service items when the items are used to serve or consume food. Examples of ~~goods~~ items designed specifically for such use include a cup sleeve or cup tray used with cups that contact beverages, trays used with liners that contact food, or a lid or cover that fits securely atop a tray that touches food.

Further, to support this definition and distinction between plastic food service ware and single use packaging, all references to *"food service ware"* should be changed to *"plastic food service ware."*

(a)(15) "Plastic"

The current definition of "plastic" does not reflect how materials are recovered or move through the recycling system. FPI recommends incorporating a weight-based threshold or de minimis standard, either within the definition of "nonplastic" or through a separate definition for "partially made of plastic." This would clarify when trace amounts of plastic are exempt, align definitions with real-world recovery pathways, and reduce the administrative burden on the Department by minimizing case-by-case evaluations.

(a)(17) "Producer"

To accurately interpret the intent of SB 54 concerning the definition of "producer" and whether that intent is reflected in the proposed permanent regulations, it is essential to review and consider the provisions outlined in Section 42041, subdivision (w)(1) and (2), which states:

(w) (1) "Producer" means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

In our view, the law does not distinguish between producers for packaging and those for food service ware, nor does it contemplate treating the covered material itself as the "product." Rather, all covered material is defined uniformly. This is especially relevant in the context of plastic food service ware, where the current drafting appears to treat the covered material as a "good," thereby shifting producer responsibility in a way that may not align with the legislative intent of SB 54.

Based on the law and our understanding, we suggest the following change to (a)(17)(B):

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

With respect to the definition of (a)(17)(F) "Distribution" and "distribute", we are seeking clarification on how the definitions apply to producers. For instance, if a manufacturer sells items to distributors within the state who then sell those items to customers outside California, we would like confirmation on whether such items would be considered covered materials.

Also, (a)(17)(F)(ii) states that "*the mere transportation of products on behalf of another person shall be deemed conducted by that person, not the transporter.*" While this language seeks to offer some clarity, it also raises questions in certain circumstances. For instance, in a scenario where a manufacturer produces an item but ships it to California at the request of a retailer, who would be considered the producer? To lessen ambiguity, the department may wish to consider substituting "another person" with "producer" to make it clear that transportation does not change a producer's obligations.

(25) "Reusable," "refillable," "reuse," and "refill"

FPI continues to believe that reuse and refill are two separate concepts, where "refillable" includes packaging designed to be refilled by consumers multiple times for the same or similar purpose in its original format.

(a)(5) "Covered Material"

The definition of "*covered material*" includes the phrase: "*In the context of end-of-life handling and processing, if a substance comprises both materials that are covered material because they originated from such items and materials from other origins, only the portions originating from covered material items shall be considered covered materials*." However, the term "substance" is not defined in the regulation and is typically used elsewhere to refer to chemicals or mixtures, which may cause confusion.

We suggest that the term “substance” should be clearly defined or replaced with a more appropriate term, such as “material,” to avoid misinterpretation.

§ 18980.1.1. Producer Identification

We continue to have concerns with the proposed producer identification frameworks. While the Department may be seeking to clarify producer obligations by establishing distinct approaches for “covered material other than food service ware” and “food service ware,” we believe this framework diverges from the legislative intent of SB 54. As per Section 42041, subdivision (w)(1) and (2) noted above, we believe the producer hierarchy should apply consistently across all covered materials.

Although the producer identification hierarchies in subdivisions (c) and (d) may appear structurally similar, the application of the term “manufacturer” differs significantly in subdivision (d). Under subdivision (c), “manufacturer” typically refers to the entity placing the product inside the covered material. However, when this same language is applied to food service ware in subdivision (d), it shifts the designation of “producer” to the manufacturer of the item itself.

From our perspective, this shift introduces inconsistency in how producer responsibility is defined and does not reflect the legislative intent of SB 54. Furthermore, we are concerned that the current drafting of subdivision (d) may unintentionally penalize in-state manufacturers, creating a potentially inequitable regulatory landscape.

FPI continues to observe references under both (1)(c) and (d) indicating that the obligation occurs when covered materials are *“first sold or distributed or used”* “*regardless of where such use occurs*.” We maintain that there needs to be certainty as to where the obligation occurs and suggest that this language be clarified.

Additionally, we note that (d) includes a reference to “*the brand or trademark referred to in paragraphs (1) and (2) of subdivision (w) of section 42041 of the Public Resources Code*” while (c) does not include the same reference to section 42041.

We are also concerned that the “most prominently used” standard in subdivision (e)(3) for identifying obligated brands or trademarks could lead to inconsistent interpretations. To address this, it may be preferable to grant the PRO the authority to develop standardized guidelines for determining brand or trademark prominence. Similarly, in subdivision (e)(1), which addresses food service ware, the PRO should be empowered to provide clear guidance on identifying the appropriate brand owner.

Response to O-55-1

Regarding 18980.1(a)(8), CalRecycle rejects the proposed change for the reasons provided in response to comment O-76-2. The objection to defining "food service ware" instead of "plastic food service ware" is unfounded because "plastic" and "plastic component" is already defined in statute, so defining the additional phrase "food service ware" is appropriate; including the qualifier "plastic" would be redundant and provide no additional clarity.

Regarding the suggestion that food service ware be considered "a type of packaging, that interpretation is untenable. Food service ware is fundamentally different from packaging, and the producer cannot feasibly always be the party that uses it in food service. Under the latter scenario, there would be no producer of items sold separately from food directly to consumers and only used by them. The Legislature did not intend SB 54 to have the meaning proposed by the commenter (that food service refers to a "type of packaging used in food service environments").
Second, the commenter is incorrect that the proposed regulations would "exclude the party filling or using the 'food service ware' from responsibility." PRC section 42041(w)(3) would apply to such persons, and nothing in the proposed regulations suggests otherwise. Nor is there any reason why a party who is the producer under section 42041(w)(1) and (w)(2) could not also be the party "filling/using" food service ware; nothing in the proposed regulations would disqualify such a party from producer status.

Even worse, the commenter's proposal creates an intractable barrier to identifying a producer for a potentially enormous range of items. Identifying producers under PRC section 42041(w)(1) and (w)(2) depends on the brand of a product. If the food service ware itself is not that product, the identity of the producer of a single food service ware item would depend on the brand of the food or food service with which it ultimately is used. In other words, there frequently would simultaneously be an unlimited range of persons who might be the producer of a single food service ware item. That approach is obviously untenable and would make it impossible for any one person to report any data regarding the item other than one who is a producer under PRC section 42041(w)(3) (i.e., the person selling or distributing the item), even though there are many persons clearly within the definition provided in (w)(1) and (w)(2). That outcome would contradict PRC section 42041(w)(1) through (3) as a whole because (w)(3) can apply only where there is no producer under (1) or (2) due to there being no person described in those paragraphs "in the state." The proposed approach is therefore clearly an incorrect application of statute.
CalRecycle rejects the recommendation to strike "intended or marketed to be" from the text. Taken as a whole, that scope of that phrase is readily understandable, and it is not credible to claim that it cannot be consistently determined whether items are used, marketed to be used, or customarily used as a food. Notably, the commenter provides no examples of items where such a determination would be difficult.

The specific edits included in the comment are rejected for the reasons stated above, which fully address all the edits other than the addition of "prepared" food. CalRecycle rejects that addition because clause (ii) under (a)(8)(B) is easier to understand and properly sets the scope of what is commonly understood as a "food service establishment." If food is packaged before an establishment acquires it and remains packaged until after it is provided to consumers, then it could not have been prepared by that establishment and falls

outside clause (ii). But, if an establishment removes food from packaging before providing it to consumers, the act of doing so is sensibly considered "food service."

Regarding the definition of "plastic," CalRecycle rejects the proposed change. First, the definition of "plastic" is established in statute, and the definition of "plastic component" in statute makes clear that any amount of plastic must render a component plastic (Public Resources Code section 42041(t) and (u). Plastic" is specifically defined in PRC section 42041(t), and CalRecycle does not have authority to rewrite that definition or the general authority to create new exemptions from it or from the definition of "covered material" in PRC section 42041(e). Rather, statute provides specific exemptions that CalRecycle can grant: for materials that present "unique challenges" (PRC section 42060(a)(3)); for materials presenting health and safety risks (PRC section 42060(a)(4)); and for local jurisdictions (PRC section 42060.5(b)). Also, accurately identifying small amounts of plastic as "plastic" does not imperil the potential for components of items containing that plastic to continue to be processed by recyclers who can do so.

Regarding the prosed changes to 18980.1(a)(17)(B), that change is rejected because it would result in circular definition: the phrases "product that uses covered material" and "product using the covered material" would be defined as "a product that uses covered material." The definition would be a verbatim repeat of the phrase defined. The deletion of the second sentence is also untenable for the reasons stated in response to comment O-76-2 and because it would leave ambiguity in the statute unresolved. Not considering plastic single-use food service ware, by itself, to be the product referred to in Public Resources Code section 42041(w) would mean that the statute would either not encompass large swaths of single-use plastic food service ware or would render every person who acquires items like utensils, plates, and straws and uses them in private a "producer." That is obviously absurd and could not have been intended.

Regarding the contention that "reuse and refill" are two separate concepts, the commenter suggests no revision to address that contention. In any event, the statute expressly provides a single definition for both those terms jointly (Public Resources Code section 42041(af)). Moreover, the contrast between 42041(af)(1)(A) and 42041(af)(2)(A) requires rejection of the commenter's assertion that consumer-refill can be for a "similar purpose"; the former expressly states that reuse or refill may be for "the same product, or for another purposeful packaging use, while the latter only refers to "the same product."

Regarding the definition of "covered material," no change is appropriate because the term "substance" has a readily discernible denotation and does not introduce any ambiguity in 18980.1(a)(5).

Regarding section 18980.1.1, the commenter's assertion that the proposed regulation "shifts the designation of 'producer' the manufacturer of the item itself" is incorrect for the reasons stated in response to comment O-77-4.

The commenter's assertion that "the obligation occurs when covered materials are 'first sold or distributed or used" is also incorrect. As section 18980.1.1(c)

and (d) plainly state, that moment is used to designate the relevant brand, not when the obligation accrues.
Regarding the difference between 18980.1.1(d) and (c), the difference is superficial only and does not require revision. In both instances, the "brand or trademark" is unambiguously the same one referenced throughout the rest of the section.
With regard to the phrase "most prominently used" and the terms of 18980.1.1(e)(1), CalRecycle rejects the commenter's proposals for the reasons stated in response to comment O-76-5.

Comment O-55-2

Article 2: Covered Material and Covered Material Categories

§ 18980.2.2. Exclusion of Certain Types of Packaging

As currently proposed, this section does not include plastic food service ware alongside packaging as eligible for the outlined exclusions. We recommend consistently using the term “covered materials” throughout the proposed regulations, including in the title of this section, rather than limiting references to “packaging.”

This recommendation is supported by subdivision (s)(4)(A) of section 42041 of the Public Resources Code, which addresses de minimis exclusions and explicitly includes both packaging and food service ware (emphasis added):

(A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.

We believe this language indicates legislative intent to treat food service ware as part of the broader category of covered materials for the purposes of de minimis.

Further with respect to de minimis, as noted in our comments above, we recommend incorporating a de minimis threshold within the definition of “nonplastic,” or introducing a separate definition for “partially made of plastic.” This would provide clearer guidance for stakeholders and help reduce the Department’s administrative burden in evaluating exemption requests.

Response to O-55-2

Comment rejected. The statute's de minimis provision is nested within Public Resources Code section 42041(s), which defines "packaging" only, and (s)(4), which unambiguously concerns only "packaging components and ancillary elements integrated into packaging." Those provisions cannot reasonably be interpreted as establishing an exclusion from the definition of any term other than "packaging." Regarding the suggestion that the regulations should establish a threshold for what renders a component "plastic" or separately define "partially

made of plastic," CalRecycle rejects that proposal for the same reasons stated in response to comment O-82-7 and O-55-1.

Comment O-55-3

Article 3: Evaluations of Covered Material and Covered Material Categories

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

The Department's authority to allow for a pathway for certain material categories to meet specific recycling requirements under SB 54 over time, while ensuring adherence to the recyclability standards of SB 343, remains crucial to bridging the two laws to allow for the continued growth of recycling systems of those materials demonstrating progress towards recyclability. The need for CalRecycle to use this authority cannot be overstated as failure to do so will impact consumer education and engagement and the overall success of California's recycling systems.

We continued to be concerned with the proposed language under (c)(1) below, which states the timeline for the likelihood of satisfying requirements is "before the next mandatory update to the material characterization study". It is important to recognize that integrating recyclable materials into recycling systems is a complex and time-intensive process. The proposed timeline may not provide equal opportunity for all materials, particularly those under consideration closer to the next mandatory update of the material characterization study. Therefore, we recommend establishing a standardized timeframe as follows:

(c)(1) The likelihood that the covered material category will satisfy the requirements of paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code within the subsequent five years ~~before the next mandatory update to the material characterization study.~~

Response to O-55-3

Comment rejected. Changing the text in section 18980.3.1(c)(1) to "within the subsequent five years," would create a contradiction between the criterion in (b)(3), which refers to the next mandatory study update, not a five-year period, and (c)(1). In contrast, changing both of those criteria to incorporate a five-year duration would be nonsensical because that duration would not necessarily align with the next time that CalRecycle would be able to assess whether the "trending" designation was appropriate to begin with. Also, because CalRecycle likely would not finalize an identification until there are less than five years before the next mandatory study update, the effect of a five-year period, in most instances, would be that materials could not be evaluated with respect to the "trending" requirements until several years after that update, when another mandatory update becomes due. Under those circumstances, the effect of the "trending" designation until that next update would be uncertain at best and not

subject to any scrutiny. CalRecycle declines to undermine the effect of statute and the proposed regulations in that manner.

Comment O-55-4

Article 4: Responsible End Markets

§ 18980.4. Responsible End Market Criteria

With respect to (a)(3), which addresses requirements for incompatible materials, markets for recycled materials are complex and constantly evolving. These dynamics often create incentives for end markets to manage incompatible materials in various ways. Requiring entities to send incompatible materials for further processing assumes the existence of cost-effective methods for collection, sorting, and transportation, which may not always be feasible or environmentally preferable.

Additionally, post-recycling waste is frequently mixed with various incompatible materials, making separation virtually impossible with current technology. While it may be possible to sell incompatible materials individually, there are limited markets for mixed incompatible materials.

To address these concerns, this provision requires clearly assigning responsibility for assessing material compatibility and processability.

On the matter of responsible end markets for recycled organic products, FPI remains unclear on the rationale for differentiating between items "*partially or wholly constituting plastic*" and those "*comprised of fiber or paper substrates*." From our perspective, compostable plastics and those made of fiber or paper substrates should be held to the same standards.

Response to O-55-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), 42051.1, and 42060, and no change is necessary to the implementation of the Act. PRC section 42041(ad) defines a responsible end market as a materials market in which the recycling of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety, and it further authorizes CalRecycle to adopt regulations identifying and establishing criteria for responsible end markets. Consistent with PRC section 42041(ad), section 18980.4(a) of the proposed regulations specifies the criteria that an end market must satisfy to be identified as a responsible end market, including the requirement concerning incompatible materials in section 18980.4(a)(3). PRC section 42051.1(c)(2) establishes that a PRO is responsible for describing in its plan how it will support and achieve the collection, processing, recycling, composting, and the development of responsible end markets for covered materials to meet the requirements of the Act, including the requirements for responsible end markets

as implemented in section 18980.4(a) of the proposed regulations. Section 18980.4(a)(3) of the proposed regulations is sufficiently clear and consistent with these requirements of the Act.

Additionally, to the extent this comment suggests that section 18980.4(a)(3) should apply only to cost-effective methods for processing incompatible materials, no change is appropriate or necessary. This recommended change is inconsistent with the intent and purpose of the Act because it would permit and encourage the disposal of covered materials that are otherwise recyclable. Consistent with the waste hierarchy established in section 40051 of the Public Resources Code, section 18980.4(a)(3) of the proposed regulations is designed to prioritize recycling whenever possible and to prevent the disposal of covered materials. Moreover, to the extent incompatible materials cannot be further processed and recycled, section 18980.4(a)(3)(B) already permits a responsible end market to dispose of the materials, so long as such disposal is conducted in a way that minimizes significant effects on the environment and risks to public health and safety.

Finally, to the extent this comment recommends subjecting materials identified in sections 18980.4(a)(4)(B) and (C) to the same standard, see the response to comment B-6-5. No further change is necessary.

Comment O-55-5

Article 5: Requirements for Producers

§ 18980.5. Producer Compliance

We suggest revising the requirements in Section 18980.5(d) to allow greater flexibility for producers. Specifically, producers who become participants under subdivision (b) should be granted sufficient time to collect and submit their calendar year 2023 supply data, rather than being required to provide it at the time of application.

Response to O-55-5

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1.

Comment O-55-6

Article 6: Requirements for the Producer Responsibility Organization

§ 18980.6.7. Eco-Modulated Fee and Fee Schedule

Based on our reading of the proposed language in (h), it appears that fees may be applied when recycling or composting is deemed “more difficult” due to the inclusion of specific elements, as referenced in the PRO design guide or when testing is required.

We are concerned that this may mean that the mere requirement for testing could trigger a malus fee, even if test results ultimately show that the material is readily

recyclable and/or compostable. Testing is often necessary to validate the recyclability and/or compostability of new or innovative materials and should not be equated with increased difficulty.

It may be helpful to clarify that a malus fee should only apply when test results demonstrate that a material is difficult to recycle or compost. This distinction is critical to support innovation while maintaining fair and evidence-based assessments.

Response to O-55-6

CalRecycle rejects this comment. See the response to comment B-47-4.

Comment O-55-7

Article 8: Producer Responsibility Plan Requirements

FPI continues to recommend including language that allows the PRO to incorporate adjustment factors into source reduction planning. Such a provision is necessary to establish a framework for accounting for economic variability and changes in PRO participation. Without this language, it is unclear how real-world fluctuations will be reflected in source reduction requirements.

Response to O-55-7

CalRecycle rejects this comment for the reasons set forth in response to comment B-11-6.

Comment O-55-8

Additional Comments

FPI recommends revisiting the assumptions underlying "Alternative 1: Less Stringent Classification of Plastic Covered Materials" in the Standardized Regulatory Impact Assessment. The rationale for rejecting this alternative includes the claim that "*robust recycling infrastructure does not exist for packaging such as plastic-lined mailing pouches and bakery boxes with plastic windows,*" and that such materials are likely to be disposed of due to recycling challenges. In our view, this generalization does not accurately reflect the recyclability of fiber-based foodservice packaging, including polycoated items.

There is growing evidence of viable and increasing recycling pathways and end markets for polycoated packaging, including items such as paper cups. For example, communities around the country, including San Francisco, accept paper cups and other polycoated foodservice packaging in their curbside recycling programs. Additionally, over 40 paper mills and end markets have publicly committed to accepting and processing post-consumer polycoated paper cups, demonstrating a current and expanding market for these materials.

To support the reassessment of Alternative 1, which incorporates accurate data and market developments related to polycoated fiber-based foodservice packaging, we suggest the following resources:

• Confirmed Markets for Paper Cups
• Paper Mill Commitment
• Foodservice Packaging End Markets Map

Additional resources are available on FPI's website dedicated to foodservice packaging recovery.

Thank you for considering our comments. FPI appreciates the Department's ongoing efforts to improve clarity through these proposed regulations. We look forward to continued collaboration to further refine the language and to ensure the regulations align with the intent of SB 54.

Response to O-55-8

CalRecycle rejects this comment. The quoted portion of CalRecycle's justification for rejecting Alternative 1 in the Standardized Regulatory Impact Assessment (SRIA) leaves out the context provided by the preceding sentence: "There are already systems in place throughout California to recycle plastic containers such as soft drink bottles and milk jugs." Those sentences, taken together, are correct as written. This was recently supported by data presented in CalRecycle's SB 343 Material Characterization Study Final Findings 2023/2024 report, published in April 2025, which concluded that Composite Food Service Paper and Packaging, which includes polycoated fiber-based foodservice packaging, is not collected by jurisdiction recycling programs or sorted into a defined stream by large volume transfer/processing facilities in California.
Regarding the broader packaging category ("fiber-based foodservice packaging") to which the comment refers, no response is necessary because the commenter only provides specific analyses with respect to polycoated packaging.

O-56: Rural County Representatives of California (John Kennedy)

Comment O-56-1

October 7, 2025

Zoe Heller
Director, Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95814

RE: SB 54 Proposed Regulation Comments

Dear Director Heller:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on the proposed SB 54 regulation text.

RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties. RCRC represents all 19 California counties that qualify as “rural counties” under Public Resources Code (PRC) Section 42649.8(h). RCRC was extensively engaged in the SB 54 development process and advocated for its passage.

RCRC appreciates the opportunity to provide comments on the proposed SB 54 regulation text. RCRC welcomes several changes included in the last few drafts of the regulation that are responsive to issues that we and other local agencies have raised. At the same time, we remain deeply concerned with other aspects of the proposal. Several revisions are necessary to avoid unintended consequences and align the regulations with the text and spirit of SB 54.

Restrictions on disposal of covered material preclude the use of compost for its intended purpose as compost.

RCRC remains concerned that the draft regulations preclude the use of compost for its intended purpose as a soil amendment.

As drafted, Proposed Section 18980.3.5(d) deems the land application of covered materials disposal. Section 18980.1(a)(5) defines “covered material” to include “materials that originated from covered material items.” Compost is a recycled organic product produced from organic waste and compostable materials. The finished product is intended to be land applied to improve soil health, water retention, and carbon sequestration.

Since compost *originates from* compostable covered materials, it is still considered “covered material” under the proposed regulations. Logically, Section 18980.3.5(d) precludes finished compost from being applied to land, as that would constitute “disposal” of covered materials. California has spent a great deal of time and effort to promote and mandate the procurement of compost; however, we fear the regulations would undermine all those efforts by deeming land application of compost to constitute disposal. We strongly urge refinements to the text or Final Statement of Reasons to clarify that this section does not prohibit the land application of finished compost.

To address this issue, we suggest modifying Section 18980.3.5 as follows: 18980.3.5 ***(e) Nothing in this section shall preclude the land application of finished compost or the beneficial use of overs from compost operations consistent with existing law.***

Response to O-56-1

Comment rejected. Under section 18980.3.5, the use of covered material as alternative daily cover is disposal of that material, not recycling of it. But that is not relevant to the use of finished compost, which is recycled organic product (i.e., a new material altogether), not "covered material." Because the proposed

regulations, as written, do not have the effect about which the commenter is concerned, no change is necessary.

Comment O-56-2

Broad categorical exclusions for food packaging undermine the program's intended goals, create free rider issues, and will confuse consumers

Proposed Section 18980.2(a)(2) creates a broad categorical exemption for covered materials that are used as packaging for a food or agricultural commodity if it is not possible to use other types of packaging to comply with USDA or FDA rules, regulations, or guidelines related to microbial contamination, safety, or structural integrity of packaging.

We understand exemptions related to microbial contamination and food safety; however, allowing exemptions based on "structural integrity" will merely create an easy pathway for manufacturers to avoid having to participate in SB 54.

RCRC is deeply concerned that this exemption is far broader than necessary to avoid conflicts with federal food safety laws. The ISOR notes that this exemption merely exempts packaging from SB 54 when it is not possible to comply with both SB 54 and those federal laws and guidelines; however, the regulation is not constructed so narrowly. Instead, the regulations exempt any food or agricultural packaging where it is not reasonably possible to use other packaging.

It is unclear how this exemption will work for producers seeking an exemption when the packing is necessary for structural integrity. Will fruit and vegetable manufacturers claim that cardboard is unsuitable because it will fail due to the inherent moisture of the commodity? Wood was widely used for the packaging and sale of agricultural commodities decades ago, but has largely given way to heavy cardboard and plastic materials. Cereal manufacturers may claim that cardboard is necessary to maintain the structural integrity of the packaging. While plastic could theoretically be used for cereal, plastic is still a covered material and even less recyclable than cardboard. Will CalRecycle deny an exemption request for cereal packaging because it could be made with another material (albeit one that is less recyclable)?

We fear that these provisions create loopholes for some of the nation's largest companies to seek exemptions for things like cardboard cereal and pasta boxes, readily recyclable plastic fruit and vegetable containers, and other goods. Such exemptions would cause widespread consumer confusion as to what should be recycled, leave local governments unreimbursed for the costs of managing materials consumers believe are "covered materials", and leave unexempt manufacturers to shoulder a higher proportion of program implementation (and mitigation fund) costs.

To avoid an unnecessarily broad universe of exemptions, CalReycle should strike the exemption pathway contained in proposed Section 18980.2(a)(2) based on structural integrity, as follows:

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

Response to O-56-2

Comment partially accepted and partially rejected. CalRecycle accepts the comment with respect to the commenter's concern over the clarity of section 18980.2(a)(2) and the potential for it to have an effect broader than intended (to avoid conflicts with federal law). See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2). CalRecycle declines to adopt the commenter's suggestion to delete the phrase "or structural integrity" from 18980.2(a)(2), however, because the revisions CalRecycle has made resolve the commenter's concern. The revisions clarify that the only "requirements for . . . structural integrity" that can justify exclusion under 18980.2(a)(2) are those imposed under mandatory regulations, rules, or guidelines. In other words, structural integrity requirements can only justify the exclusion when those requirements are mandated under federal law and there is no alternative packaging that can be used to avoid violating them. See, also, CalRecycle's response to comment I-59-2 regarding the term "guidelines."

Comment O-56-3

Regulations improperly restrict the scope of local costs eligible for reimbursement and create a reimbursable state mandate

While the proposed regulations attempt to provide clarity as to what types of local government and recycling service provider costs are reimbursable by the PRO, RCRC is concerned that it appears to improperly restrict the scope of local costs eligible for reimbursement beyond what is provided under SB 54. SB 54 is clear in that the Legislature intended to “ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.”1 Furthermore, SB 54 intended for this new framework to “shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products.”2

SB 54 is quite expansive in terms of the types of local costs that are reimbursable by the PRO or independent producer. RCRC objects to language in proposed Section 18980.8(g)(2) that limits the scope of "covered costs" by the PRO or independent producer. That section includes an exhaustive list of covered costs, so the PRO could decline to reimburse any costs that it argues are outside of the scope of those three categories, potentially including legitimate claims for educational expenses or covered material collection and recycling activities.

1Public Resources Code Section 42040(b)(2)
2Id.

The effort to narrow the costs of reimbursable expenses to exclude costs that are of the same nature as those that would ordinarily exist fails to recognize that SB 54 itself removed local discretion and converted all those voluntary collection efforts into mandates.

A PRO or independent producer could try to avoid costs for collecting and getting covered materials to market simply because the local jurisdiction previously *voluntarily* collected those materials before SB 54 was signed into law. This ignores the fact that while a local agency previously had the ability to include or exclude any materials from its collection program, SB 54 removes any local discretion and *compels* the entity to include in its program all covered materials CalRecycle determines are recyclable or compostable. Any bale of covered materials collected under SB 54 is a ***NEW, required*** cost and is in furtherance of helping producers achieve SB 54's mandates, so any expenses incurred in collecting, processing, or transporting those materials are eligible for reimbursement under SB 54. Troublingly, this provision most disadvantages those communities that have gone above and beyond the AB 939 50% diversion mandate, penalizing good actors.

A PRO or independent producer could reject claims to pay for local educational campaigns under the argument that educational campaigns would ordinarily exist anyway even in the absence of SB 54. Even if a local agency's educational materials are focused on SB 54 implementation, the PRO may be able to argue that the publication was similar in nature to others that had previously been published by the agency and so is no different in nature than ordinarily expected costs. This is clearly contrary to SB 54's intent that the PRO cover local implementation costs, including education.

Because of its narrow construction, the proposed regulations create a reimbursable state mandate because SB 54 and CalRecycle require local governments to provide a higher level of service, and the proposed regulations preclude recovery of those costs from the PRO and independent producers. To the extent that a PRO or independent producer rejects local reimbursement claims, it is reasonable to assume local governments will seek to recover those SB 54 implementation costs through the Commission on State Mandates, thereby significantly increasing state liabilities.

Response to O-56-3

Comment rejected. Although the commenter does not propose any alternative text for CalRecycle to consider, CalRecycle interprets the comment as suggesting that section 18980.8(g) be revised so that all expenses incurred in the end-of-life management of covered materials be considered costs for which the PRO and Independent Producers are responsible. That change would result in section 18980.8(g) failing to impose the reasonable limitations that the express wording statute places on the costs the PRO is required to reimburse or pay for (referred to as "covered costs" in the proposed regulations). Multiple provisions of the statute make clear that covered costs do not encompass costs associated with managing covered material that would have been incurred regardless of enactment of SB 54.

The costs activities listed in PRC section 42051.1(j)(1)(B) are those that a PRO's budget must fund, but that funding is circumscribed by the limitation that eligible costs are those "associated with implementing the plan." The commenter's approach would ignore that limitation, reading 42051.1(j)(1)(B) so broadly that all acts that "help[s] producers achieve SB 54's mandates . . . are eligible for reimbursement." That interpretation is implausible because practically every single act related to managing waste would fit that description, such that SB 54 would relieve local jurisdictions of any financial burden with respect to handling single-use packaging and plastic single-use food service ware. If the Legislature had intended SB 54 to have that expansive effect, the complexity of the statute's funding-related provisions would be unnecessary: The Legislature could simply have stated that the PRO "must fully fund all operations conducted by local jurisdictions and recycling service providers for managing covered materials." Public Resources Code section 42040(a) further proves that that was not what the Legislature intended. There, the Legislature expressly set forth its intent: "to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of [SB 54 and its regulation]." While costs do not necessarily need to be greater than previous, similar costs, they must be "new" and related to SB 54.

This comment also appears to rely on an incorrect interpretation of Public Resources Code section 42053(d)(1). That provision does not purport to define the range of costs that a PRO must cover. Rather, it merely states one factor the PRO must consider when exercising its discretion with respect to its fee schedule: "[t]he costs to ensure each covered material category meets the requirements of this chapter." But subparagraphs (A) through (E) do not state costs that the fees must be sufficient to cover in their entirety. To the contrary, paragraph (1) states that the costs to be considered "may include all of the following," including the costs identified in subparagraph (C): "[c]osts incurred by local jurisdictions . . . to process and transport covered material." By providing those costs as a categorical example of those that the PRO may consider, as opposed to identifying them as mandatory costs that the PRO must (or "shall") cover, this statutory text makes clear that the Legislature did not intend for funding by the PRO to cover the entirety of local jurisdictions' and recycling service providers' costs for handling covered materials. In effect, the Legislature

only authorized, but did not require, the PRO to base its fee schedule to some degree on those costs.

The commenter's concerns over the range of costs, such as those "previously voluntarily" assumed by local jurisdictions, might not be considered covered costs is based on an unduly narrow reading of 18980.8(g)(2)(B) of the proposed regulations, which do not preclude costs from being covered costs merely because they are the same nature as certain previous costs and not greater than those costs from being covered costs. Section 18980.8(g)(2)(B) is not limited to costs that are "of a different nature than ordinarily expected costs," but rather identifies those costs as only one example of a cost "that would not reasonably have been expected to be incurred in the absence of the Act." Circumstances may exist that establish that costs voluntarily incurred since before SB 54 passed are no longer voluntary—in other words, not reasonably expected to be incurred in the absence of the Act (section 18980.8(g)(2)(B))—and thus should be covered costs. Such circumstances could relate, for example, to costs that a local jurisdiction previously incurred but would not reasonably have continued to incur indefinitely in the absence of the act.

Regarding the local educational campaigns specifically, the commenter's concerns are also misplaced because provisions in the statute and the proposed regulations already ensure that local jurisdictions' costs related to technical assistance, education, and other outreach efforts are covered to the appropriate degree. Under PRC section 42051.1(e), the PRO must ensure coordination between its efforts and "existing educational and promotional efforts." Those "existing" ones logically must encompass, for example, those that jurisdictions likely would have undertaken regardless of SB 54. In other words, the statute requires that the PRO does not merely act in parallel with local jurisdictions or merely duplicate jurisdictions' ordinary efforts. That dynamic ensures that the PRO's program reduces the burden of ordinary, expected local educational campaigns. Section18980.8(d)(3) of the proposed regulations address that dynamic, requiring a process by which the PRO will coordinate efforts among the PRO, local jurisdictions and others. Together with the assurances in section 18980.8(g)(2)(B), these provisions reasonably address local jurisdictions' concerns that they may face increased burden with respect to those efforts.

Comment O-56-4

Dispute resolution process must be revised to protect local governments and preserve existing rights to pursue civil litigation

Local governments and ratepayers have long shouldered all the costs of managing and recycling waste, which is why SB 54's transformative approach is so appealing. Last year, RCRC and other stakeholders raised two important and interrelated questions – how will the reimbursement process work and how will disputes regarding reimbursement be resolved? Since that time, we and other stakeholders have engaged in informal discussions with the Circular Action Alliance about those topics. Those questions largely remain unanswered as the PRO works to figure out how to structure the program.

We recognize that CalRecycle has made many improvements to the dispute resolution framework, but important gaps remain that must be addressed. The proposed dispute resolution framework provides a pathway for the local jurisdiction or recycling service provider to request mediation, which would proceed to binding arbitration to resolve any remaining differences. Unfortunately, the regulation is silent on whether CalRecycle intends for this process to replace or supplement the parties' existing recourse to civil litigation. *At a minimum, CalRecycle must make clear in the regulations or Statement of Reasons that the dispute resolution process outlined in the regulations does not interfere with the parties' right to enforce through civil litigation the PRO's obligations to determine and pay costs incurred.*

Mediation and arbitration should not be the sole remedies available and must not infringe upon existing rights to civil litigation to enforce the PRO's obligation to determine and reimburse local jurisdictions and recycling service providers. Local jurisdictions and recycling service providers must retain the ability to resolve disputes with the PRO through civil litigation, including any disputes that may remain after mediation.

Additionally, RCRC strongly opposes any requirement for local jurisdictions to be compelled to use ***binding*** arbitration to resolve disputes with the PRO. While we believe mediation can be a useful dispute resolution tool, binding arbitration must not be compelled to resolve any remaining differences. ***Nor can binding arbitration be the only tool available if mediation fails.*** Arbitration is often criticized as being expensive, unwieldly, and prejudicial to less-resourced parties. Compelled arbitration is often exploited by large businesses to chill litigation from aggrieved parties who lack the resources or technical expertise to engage in that process. Simply speaking, the costs and complexity of binding arbitration will strongly disincentivize local jurisdictions and recycling service providers from seeking to resolve legitimate disputes with the PRO. We are also deeply concerned that binding arbitration is not reviewable in civil courts, thereby reducing the likelihood that local jurisdictions will avail themselves of the dispute resolution process.

To ensure these rights are protected, we suggest the following changes to Section 18980.8(h):

18980.8(h)(4) ***The obligations of a PRO or independent producer to determine and pay the costs incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under Section 42051.1 are enforceable in a civil action between the affected entity and the PRO or independent producer. As an alternative to civil litigation, the dispute resolution*** ~~The~~ process must provide the option for the local jurisdiction or recycling service provider to require the dispute to be submitted to mediation and, if no agreement is reached through mediation, ***the matter may be submitted to*** binding arbitration…

(7) Nothing in this subdivision shall be construed to limit the ability of a local jurisdiction or recycling service provider to enforce the obligations of a PRO or

independent producer under Section 42051.1 through a civil action in a court of competent jurisdiction, or to otherwise seek judicial review of any determination made by a PRO or independent producer, unless the local jurisdiction or recycling service provider has voluntarily elected to submit the dispute to binding arbitration.

Response to O-56-4

Comment rejected. The proposed regulations do not require any local jurisdiction or recycling service provider to submit to binding arbitration or otherwise relinquish the right to pursue civil litigation; section 18980.8(h)(6) unambiguously states as such. Other than as framed in that provision, it would be improper for the proposed regulations to directly state whether any party has a right to pursue a remedy via litigation. Whether obligations are enforceable in civil actions is a substantive legal question that the proposed regulations cannot affect; CalRecycle's authority does not extend to dictating to courts what disputes are judiciable. Rather, CalRecycle has the authority to adopt regulations that interpret statute and govern CalRecycle's administrative enforcement. Lastly, the proposed regulations do not preclude any parties from voluntarily engaging in any form of dispute resolution, including binding arbitration on terms other than those offered pursuant to a producer responsibility plan. Accordingly, the proposed changes are not necessary to the implementation or enforcement of the Act.

Comment O-56-5

Regulations impermissibly allow use of recycling technologies that produce a significant amount of hazardous waste

Despite clear statutory direction to the contrary, the regulations allow a PRO to use non-mechanical recycling technologies that produce significant amounts of hazardous waste.

Public Resources Code Section 42041(aa)(5) requires CalRecycle to exclude plastic recycling technologies that produce significant amounts of hazardous waste. Surprisingly, Proposed Regulation Section 18980.4.1(d) seeks to allow recycling facilities to generate ANY amount of hazardous waste as long as it is handled and disposed of in compliance with an applicable permit. This clearly exceeds CalRecycle's regulatory authority and jeopardizes implementation of the law. SB 54 clearly prohibits the ***production*** of significant amounts of hazardous waste – it does not prohibit the ***unauthorized management of significant amounts of hazardous waste***, as outlined in the proposed regulations.

Simply stated, SB 54 is concerned with generation, not management or disposal, of hazardous waste. If the Legislature had wanted CalRecycle to ensure that hazardous waste was appropriately managed and disposed of, it could easily have done so. Instead, the Legislature focused restrictions on the ***production*** of hazardous waste.

The regulations also presuppose that materials will be managed domestically, where permits and laws regulate the management and disposal of hazardous waste. Foreign markets may not have hazardous waste disposal requirements commensurate with the Resource Conservation and Recovery Act. In the absence of an equivalent regulatory environment, the regulations would allow foreign chemical recycling facilities to manage hazardous waste as ordinary trash.

To align the regulations with existing statutory law, CalRecycle must strike proposed Section 18980.4.1(d)(1)(B):
~~(B) The production and management of hazardous waste that is handled and disposed of in compliance with an applicable permit does not present a substantial risk of harm to public health or of contamination of the environment, for purposes of the Act and this chapter. Minor technical violations or minor deviations from permit conditions that do not result in, or are not reasonably likely to lead to, actual environmental harm or harm to public health shall not, by themselves, be considered noncompliance for purposes of this section.~~

Regulations impermissibly restrict the definition of "hazardous waste"

Section 18980.4.1(d)(1) defines "hazardous waste" for purposes of SB 54 as hazardous waste defined under the federal Resource Conservation and Recovery Act (RCRA). This is a clear violation of existing law. Public Resources Code Section 40141 defines "hazardous waste" for purposes of Division 30 (Waste Management) of the Public Resources Code. That section defines "hazardous waste" to include, but does not limit the definition to, RCRA hazardous waste. It also cross-references Health and Safety Code 25117, which includes any wastes that meet criteria adopted by the Department of Toxic Substances Control (DTSC). As such, the Public Resources Code defines "hazardous waste" not as RCRA hazardous waste, but as a far broader class of hazardous wastes that are determined by DTSC.

SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, is contained in Chapter 3 of Part 3 of ***Division 30*** of the Public Resources Code. While SB 54 did not itself define "hazardous waste", it did not need to because Section 40141 already supplied that definition. As such, the ISOR's claim that "the Act does not define hazardous waste" ignores the very foundations of statutory interpretation and statutory law. The Legislature understood the Public Resources Code definition of "hazardous waste" when it crafted SB 54 to include the larger universe of Californiadesignated hazardous waste, not just RCRA hazardous waste. While PRC 40100 allows the incorporation of alternate definitions if "the context otherwise requires", there is no clearly articulated context in SB 54 or the legislative record that would support the far narrower definition contained in the regulations. The ISOR's attempted justification for using the federal RCRA definition to align California law with those of other states where recycling facilities may be located misses the mark – the Legislature already defined "hazardous waste" more broadly than the regulations and the statute is controlling.

To address this issue, CalRecycle must modify proposed Section 18980.4.1(d)(1) as follows:
(1) For purposes of paragraph 5 of subdivision (aa) of section 42041 of the Public Resources Code, "significant amounts of hazardous waste" means hazardous waste as defined in ***Public Resources Code Section 40141*** ~~Title 40 of the Code of Federal Regulations Section 261.3~~ that presents a substantial risk of harm to public health, or of contamination of the environment.

Response to O-56-5

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-56-6

Local jurisdiction exemption pathway impermissibly imposes additional requirements beyond those included in the statute

Public Resources Code Section 42060.5(b) allows CalRecycle to grant an extension or exemption from requirements to include all covered materials in a jurisdiction's collection and recycling program if the jurisdiction shows that compliance is not practicable for that covered material because of specific local conditions, circumstances, or challenges. CalRecycle seeks to build upon this in proposed regulation Section 18980.11.1(c)(4) by also requiring the applicant to include documentation about the effects on the environment, environmental justice, worker health and safety, public health, and hazardous waste generation. As such, the regulations would allow CalRecycle to deny a requested exemption or extension unless it provides documentation of all of these impacts that are outside the scope of what the Legislature clearly contemplated in SB 54 – impracticability based on specific local conditions, circumstances, or challenges. If the Legislature intended to impose additional procedural hurdles or substantive criteria to qualify for an exemption or extension, it could have done so.

To address this issue, we suggest amending proposed Section 18980.11.1(c)(4) as follows:
(4) A description, with supporting documentation, of the specific local conditions, circumstances, and challenges that make it impracticable for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their collection and recycling programs. The description must demonstrate that the identified material cannot practicably be included in the collection and recycling programs. The description must also address, at a minimum, the necessity of the exemption with respect to the following considerations: program efficacy; technological or economic limitations; legal restrictions or requirements; ~~effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation;~~ and transportation safety.

Response to O-56-6

Comment rejected. The commenter erroneously asserts that an exemption request must "include documentation about the effects on the environment, environmental justice, worker health and safety, public health, and hazardous waste generation." To the contrary, section 18980.11(c)(4) merely requires an application to "address" those, and it states that doing so is with respect only to "the necessity of the exemption." If any of the listed factors do not underly such necessity to begin with, simply stating as such would necessarily be sufficient to address them. By listing the factors that must at least be "addressed," the proposed regulation ensures that local jurisdictions and recycling service providers consider all the dimensions that CalRecycle, without limitation, considers potentially relevant to the impracticability of compliance considering local conditions, circumstances, and challenges.

Comment O-56-7

Regulations should include an opportunity for stakeholders to provide feedback when a producer recommends changes to the covered material category list.

Proposed Section 18980.2.6 establishes a pathway through which a PRO, participant producer, or independent producer may recommend changes to the current Covered Material Category (CMC) list. As part of that process, the entity making the request must discuss financial implications and impact of the recommended changes on responsible end markets and intermediate supply chain entities. A PRO or independent producer may significantly underestimate the potential financial impacts of adding a new material to the CMC list so they can sell it in the state. Given the potentially significant impact that changes to the CMC list may have on the solid waste industry and local governments, it is imperative that those entities be given an opportunity to provide feedback on the change and be able to comment on the accuracy of the supporting information.

To address this concern, RCRC suggests adding a new subdivision (e) to proposed Section 18980.2.6 as follows:

18980.2.6 ***(e) The department shall provide an opportunity for public engagement and allow public comment and submission of relevant information and evidence, including, but not limited to, responding to the estimated financial implications and impacts of those changes on local jurisdictions and recycling service providers.***

Response to O-56-7

CalRecycle rejects the comment. A formal process of soliciting responses in response to every recommendation submitted to CalRecycle, no matter how minor and without regard to their merit as CalRecycle may initially determine, would be impracticable and would prevent CalRecycle from effectively maintaining the CMC list. Moreover, nothing in statute or the proposed regulations restricts interested parties from collaborating with a PRO or individual producers concerning CMC list recommendations. Importantly, the proposed

regulations do not generally prohibit any person from submitting information to CalRecycle. While CalRecycle's consideration of specific recommendations submitted to it is subject to the limitations stated in section 18980.2.6, section 18980.2.5(f) explains that, subject to minimal restrictions, it will consider information submitted by any person when updating the CMC list. This level of participation reasonably accommodates interested persons who are not directly subject to the Act but wish to provide relevant information for CalRecycle to consider.

Comment O-56-8

Local government exemption process is unnecessarily lengthy and producer review should be compressed

RCRC remains concerned that the process outlined to review a local jurisdiction or recycling service provider exemption request is far too lengthy and will inhibit effective implementation of SB 54.

PRC 42065.5(b) allows local jurisdictions or recycling service providers to seek an exemption from the requirement to collect specific covered materials because local conditions, circumstances, or challenges make collection impracticable. As part of this process, the local jurisdiction or recycling service provider must notify the PRO and independent producers, who can object and arrange for alternative means for collection, processing, storage, and transportation of those covered materials.

The proposed regulations allow the PRO and independent producer 90 days to review an exemption application before a local jurisdiction or recycling service provider can submit it to CalRecycle for consideration. It should be noted that the PRO and Independent Producers are under no obligation to respond to an exemption request under PRC 42060.5. As such, the proposed regulation puts the applicant in purgatory for three full months while waiting to see if the PRO or independent producer even cares enough about the request to respond. This timeframe is unnecessarily lengthy and could easily be exploited by a PRO or independent producer to drag out the process. Rather than provide 90 days for the PRO or independent producer to review an application, the regulations should reduce that period to 30 days. Similarly, the regulations should reduce the review period for renewal notices from 30 days to 14 days.

To address these concerns, RCRC suggests the following changes to Section 18980.11.1(d):
18980.11 (d) No exemption application or renewal request shall be submitted to the Department until after the local jurisdiction or recycling service provider has provided all PROs and Independent Producers the application or advance notice of the renewal request. All PROs and Independent Producers shall have ~~**90**~~ ***30*** days to review an application, and ~~**30**~~ ***14*** days to review a notice of a renewal request. During the review period

Response to O-56-8

CalRecycle rejects this comment, which requests that PROs and Independent Producers be given only 30 days to review applications and provide comments and only 14 days to review renewal requests. No change to the timeframe is appropriate because section 18980.13(i)(3) and (j) provide that penalties will not accrue while a request for an exemption under Public Resources Code section 42060.5(a) remains pending. Section 18980.11(c) provides extra clarity. That provision delays the effectiveness of new obligations pursuant to Public Resources Code section 42060.5(a) for a year and explains that, if an application is submitted during that period, those obligations are further delayed until CalRecycle decides whether to grant or deny the application. More generally, in the event that an applicant is prejudiced by delays beyond their control, that extenuating circumstance would necessarily affect the appropriateness of penalties, if any, that may be imposed. See PRC section 42081(c). These features of statute and the proposed regulations adequately protect against harm to local jurisdictions and recycling service providers, especially given the absence of clear incentive for a PRO or Independent Producer not to review an application or only to do so at the expiration of the 90-day (or 30-day, for renewals) period.

Comment O-56-9

Enforcement scheme for local jurisdictions is unsupported by SB 54's statutory construction and can be better accomplished through other enforcement pathways

CalRecycle's proposed regulations impermissibly seek to impose SB 54's enforcement regime on local jurisdictions and recycling service providers. This approach is unsupported by SB 54's statutory construction and local compliance can be better accomplished through other existing enforcement pathways.

SB 54's enforcement authority is clearly limited to imposing penalties on producers and the PRO. CalRecycle's proposed regulations are predicated on the assumption that the term "any entity" in PRC 42081(a)(1) broadens the scope of its enforcement authority; however, that term should be defined in context of the other provisions included in Article 5 of SB 54. PRC 42081 seeks to interpret and implement PRC 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of PRC 42080.

PRC 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. PRC 42081 in turn:

• Sets the amount of penalties;

• Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;

• Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and,
• Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO, etc.

PRC 42083 and 42084 also allow CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Neither PRC 42080 nor PRC 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the proposed regulations inappropriately subject local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot avail themselves of a corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling AWAY from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under AB 939, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively. *At worst, penalties for local jurisdictions should be capped at the maximum $10,000/day AB 939 limit.*

Response to O-56-9

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change to cap the maximum penalty at $10,000 for a local jurisdiction is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction or recycling service provider, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings

conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant local jurisdiction or recycling service provider consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction or recycling service provider will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-56-10

Regulations do not actually require recycled covered materials to be used in new products

Proposed Section 18980.4 defines what constitutes the “end market” to which covered materials must be sent and recycled. The regulations define end markets as those that produce glass, metal, paper, or plastic feedstock that meets quality standards necessary to be used in lieu of virgin materials, including facilities that produce cullet (glass), ingots/sheets/coils (metal), pulp (paper), or pellets (plastic).

While these are crucial steps in the recycling process, there is no guarantee that any of these materials produced at a “responsible end market” will ultimately be used by manufacturers to produce a new commodity. Instead, the regulations are indifferent as to whether the recycled feedstock is used, stockpiled, etc.

While Section 18980.3.5 prohibits “disposal” of “covered materials” (which includes products derived from covered materials), there is still no requirement that those materials be used for anything. This creates a significant risk that the regulations will merely result in the stockpiling of recycled feedstock that may or may not eventually be incorporated into new products depending on the cost of recycled vs. virgin feedstock. These concerns will be particularly acute if compostable plastics are ultimately considered “compostable” under the Act, as there are virtually no markets for the use of those products.

Response to O-56-10

Comment rejected. The statutory definition of "recycling" requires that the recycling process be considered complete upon the return of materials into the "economic mainstream in the form of recovered material for new, reused, or reconstituted products . . . that meet the quality standards necessary to be used in the marketplace." Consistent with that definition, section 18980.4(b) requires that, to be a responsible end market, an end market must be one that "produces and sells or transfers recycled organic product or recycled content feedstock that meets the quality standards necessary to be used for the creation of new or

reconstituted products." If the end market simply stores or disposes the recycling output, it would not be considered a responsible end market for the covered material inputs. Accordingly, no change to the proposed regulation is appropriate.

Comment O-56-11

RCRC appreciates various changes made throughout the regulatory process in response to issues raised by local governments

We acknowledge and greatly appreciate many of the changes that CalRecycle has made throughout the regulatory process to address concerns raised by local governments and recycling service providers. Some of those changes include: • Specifying that the date by which local jurisdictions and recycling service providers must collect and recycle covered materials aligns with CalRecycle's final approval of the PRO's stewardship plan.
• Providing local jurisdictions and recycling service providers one year to incorporate new covered materials into their collection and recycling programs.
• Establishing a presumption that covered materials are considered to be included in a jurisdiction's collection and recycling program if the provider collects the material and transfers it to a responsible end market or intermediate supply chain entity.
• Clarifying that local jurisdictions and recycling service providers are not required to establish the availability of a responsible end market that ultimately recycles the covered material.
• Deeming the absence of a responsible end market to be a local condition, circumstance, or challenge for which a local jurisdiction or recycling service provider can seek an exemption.
• Clarifying that the PRO's dispute resolution process must be made available if the PRO or independent producer unreasonably delays determinations of whether a particular cost is reimbursable.
• Modifying "chain of custody" requirements to greatly ease administration and reduce implementation costs by initiating tracking with the processing and subsequent transfer of covered materials rather than the point at which those materials are collected.
• Ensuring that a local jurisdiction has a choice to be reimbursed based upon its actual program implementation costs or through a "performance-based" funding model offered by the PRO.
• Providing an opportunity for local jurisdictions and recycling service providers to cure violations within 30 days of notice.
• Specifying that penalties shall not accrue against a jurisdiction or recycling service provider during the pendency of an exemption or extension request.
• Eliminating the ability for CalReycle to impose penalties on a local jurisdiction regardless of the reason for a violation.

While these changes are helpful, they do not address our underlying concerns that: 1) Local jurisdictions and recycling service providers will not be made whole for program implementation costs; 2) Jurisdictions will not have adequate or truly accessible pathways to effectively resolve reimbursement disputes with the PRO; 3) Categorical

exclusions for food and agricultural commodity packaging will undermine the intent of the law and impose additional burdens on local jurisdictions, recycling service providers, and nonexempt manufacturers. *For these reasons, it is essential that CalRecycle carefully and scrupulously review and oversee development and implementation of the PRO plan and reimbursement process and ensure that categorical exclusions are only approved in circumstances where there is a clear and unavoidable conflict between SB 54 and federal law.*

Conclusion

RCRC appreciates your consideration of these comments. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Response to O-56-11

Comment rejected. No response to this portion of the commenter's submission is necessary because it identifies provisions of the regulations of which the commenter approves and recaps objections and proposed changes discussed in earlier portions of the submission. No response to comments expressing approval of the regulations is necessary, and CalRecycle has addressed the commenter's objections and proposed changes in response to the portions discussing them in detail.

O-57: California Council for Environmental & Economic Balance (CCEEB) (Dawn Koepke)

Comment O-57-1

Business-to-Business & Producer Clarity

CCEEB urges the Department to provide additional clarity and guidance on business-to-business related packaging for producers. While CCEEB's members are fairly sophisticated and up to speed on their regulatory compliance obligations, our members continue to struggle with a lack of clarity as to whether they are considered a producer for packaging that they may not manufacture but use in business-to-business transactions. Further, many are national and international companies who may ship business-to-business products in relevant packaging to California sites and through California, but trying to maintain granular data on what material is in scope for this Regulation may be challenging. The Regulation notes if a producer is not clearly identified then any entity that distributes covered material acts as a producer. A great deal of ambiguity remains for companies who do not manufacture the packaging but use it in business-to-business transactions. As such, it will be critical to provide added clarity through additional guidance, frequently asked questions (FAQ), and more to ensure all entities that could have compliance obligations understand their obligations.

Response to O-57-1

Comment rejected. Neither the statute nor the proposed regulations suggest that the identity of the manufacturer of covered material is directly relevant for

determining the producer. Rather, the only manufacturer that is relevant is the manufacturer of products that use covered material (Public Resources Code section 42041(w)(1)). Regarding application of the statute in the "business-to-business" setting, see CalRecycle's responses to comments O-38-1 and O-103-2. In any event, the commenter's only proposal is that CalRecycle publish an "FAQ" and other resources to help entities understand their obligations. No change to the proposed regulations are necessary because CalRecycle can create such resources outside the formal rulemaking process.

Comment O-57-2

Article 1. Definitions.

Section 18980.1(a)(2) – Alternative collection.

CCEEB urges the Department to further revise the definition of "Alternative Collection." As currently drafted, the definition would authorize the collection of covered materials, including discarded materials, at curbside by a provider other than an exclusive franchise provider under contract with a municipality. We are disappointed this has not been resolved after a number of requests for revision to ensure franchise agreements are upheld. Negotiations on SB 54 never intended to undermine franchise agreements through SB 54 and yet this definition could result in that very outcome. Fortunately, producers seem focused on utilizing the current system of recycling service providers to achieve the goals of SB 54. In that regard, any alternative management of materials is likely to be rare and should be clear that franchise agreements shall be upheld via revision to the definition of "Alternative Collection" in the draft permanent Regulation.

"(2) "Alternative collection" means a program that collects covered materials~~, regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection,~~ and that is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code~~, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction~~.

Response to O-57-2

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2, B-42-1 and O-47-2.

Comment O-57-3

Article 4. Responsible End Markets

Section 18980.4(b)(4) – Responsible End Markets & REM Plastics

CCEEB supports the revisions made to the Regulation related to whether material recovery facilities creating flake or pellet are considered End Markets. Although CCEEB and its members do not believe a facility creating flake or pellet should be considered an end market, the revisions to the Regulation only address the concern in part by

removing the term “flake” and only referring to the pellet facilities as an end market. To fully resolve the concerns, CCEEB recommends further clarifying the issue by removing “but not limited to” from the section so the language is not interpreted to mean that end markets could potentially include facilities creating flake. Notably, the change in this version of the Regulation clearly intended to remove facilities creating flake from being considered an end market, but the text of the Regulation with this phrase creates ambiguity to this point.

Response to O-57-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act. PRC section 42041(aa) defines recycling as the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. PRC section 42041(ad) defines a responsible end market as a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a specified manner and authorizes CalRecycle to identify responsible end markets. Section 18980.4(b) of the proposed regulations implements these requirements by clarifying the types of facilities, by material type, that are considered end markets, consistent with the definition of recycling in PRC section 42041(aa), such that, if they satisfy the criteria of section 18980.4(a) of the proposed regulations, they may be considered responsible end markets. The proposed regulations necessarily cannot anticipate or address an example of every possible facility or operation that would appropriately constitute the end market for plastic covered material. Therefore, the current language of section 18980.4(b)(4)—defining the overall stage of the recycling process that is appropriately deemed an end market ("the entity that first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products") and providing a non-exhaustive example (Such end markets include, but are not limited to, entities that create pellet")—therefore strikes an appropriate balance between offering regulated parties sufficient guidance on complying with the requirements of the Act while still preserving sufficient flexibility for facility- or operation-specific conditions. CalRecycle declines to adopt the recommended change because deletion of "but not limited to" would unnecessarily limit and prevent otherwise appropriate end market facilities from being deemed a responsible end market for plastic covered material. No change is necessary.

Comment O-57-4

Article 8. Producer Responsibility Plan

Section 18980.8(g)6 – Producer Responsibility Plan

This section indicates that the PRO may include in its PRO Plan a mechanism for addressing cost-based claims that is “performance-based.” However, a review of the statute reveals no reference to cost recovery being tied to performance. The statute clearly states that the PRO is responsible for covering the costs incurred by local governments and recycling service providers in implementing the program. It does not suggest that these stakeholders’ compensation should depend on meeting performance criteria that were not contemplated by the statute.

While additional detail will be provided in the PRO Plan, we recommend that the regulations avoid being overly prescriptive on this point. Such an approach would ensure consistency with the clear intent of the statute.

Response to O-57-4

Comment rejected. Section 18980.3.2(g)(6) unambiguously states that a performance-based approach must be optional. They must be in addition to a claims-based approach described in the preceding paragraphs. Accordingly, to the extent any compensation "depend[s] on meeting performance criteria that were not contemplated by the statute," that would only be by mutual consent between the stakeholder and the PRO. Nothing in statute precludes such arrangements.

Comment O-57-5

Article 11. Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Section 18980.11(c) – Exemptions and Extensions for Local Jurisdictions and Recycling Service Providers

The Regulations state that local jurisdictions’ and recycling service providers’ obligations to collect material on the CMC list do not take effect while CalRecycle is deciding on an application for an extension or exemption. The ISOR explains that this requirement is “necessary to ensure that the statutory exemption or extension serves its express purpose of preventing imposition of additional obligations caused by the change to the CMC list that are impossible to fulfill.”1,2 The Regulations also establish in 18980.11.1 a process a local jurisdiction or recycling service provider must follow as part of preparing an application for CalRecycle’s review. The proposed process is described in the ISOR as necessary to ensure adequate notice to stakeholders and allow for discussions between local governments, recycling service providers, and the PRO/independent producers.

To align these two sections, the Final Statement of Reasons should clarify that a “request” to the Department pursuant to this section is a notification of the intent to file an application. That application would meet the criteria in 18980.11.1 and be considered by CalRecycle for approval or denial. This clarification would ensure that the consultation process with the PRO required in Section 18980.11.1(d) serves its

intended purpose and local jurisdictions and recycling service providers are not subject to penalties during that consultation process, which the PRO has discretion to extend.

1Department of Resources Recycling and Recovery. 2025. SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations: Initial Statement of Reasons. p 252.
2We note the Act uses the term “practicable,” not possible, as the ISOR would suggest at page 252. The ISOR correctly assesses the framework of practicability on page 254 pertaining to Section 18980.11.1(c)(4).

Response to O-57-5

Comment rejected. CalRecycle is only required to respond to comments regarding the current regulation text. To the extent the commenter's request to revise the Final Statement of Reasons can be construed as a request to revise the regulation text, comment rejected for the same reasons stated in response to comment B-42-3.

O-58: Independent Beauty Association (Akemi Ooka)

Comment O-58-1

The Independent Beauty Association (IBA), a non-profit trade association, respectfully submits the following comments in response to CalRecycle's review request of the **SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations**, dated August 22, 2025.

INTRODUCTION TO IBA AND OUR PURPOSE

The Independent Beauty Association, a non-profit trade association, has been the voice of small and independent cosmetics companies since 1974. IBA represents 600 organizations in the indie beauty and personal care industries. We submit these comments on behalf of small- to medium- sized businesses operating in the overlap between OTC monograph drugs and cosmetics.

Understanding the overlap between OTC monograph drugs and cosmetics is essential to understanding the impact of SB54 on businesses in the beauty sector. We intend to highlight the impact that SB54's provisions have on IBA member companies, other small, entrepreneurial businesses, as well as the ripple effects which may lead to increased cost and/or reduced product choice available to diverse populations of California consumers.

IBA offers observations of industry impact from SB54 with the intention to address policy concerns and improve regulatory language to clarify compliance for businesses operating under federal OTC monograph rules. Below, we highlight a distinct subset of OTC monograph drug categories and their role in the independent and small business sector of the beauty and personal care products industry, as well as the regulation's inevitable impact on market accessibility, innovation, and consumer choice.

IMPACTED PRODUCT CATEGORIES

Certain over-the-counter drug products sit at the interface of OTC and cosmetic classification and play an important role in the beauty and personal care product industry. The following product categories are examples that sit at this nexus: sunscreen, anti-acne, anti-dandruff, skin protectants, topical analgesics, oral health care, and anti-perspirants. These products make significant contributions to the US economy and meet consumer over-the-counter needs. Notably, OTCs provide relief from medical ailments without the need for a prescription and are widely available to consumers. For example, topical analgesics provide pain relief to many consumers suffering from muscle and joint pain, whether from arthritis, aging, menstrual discomfort, or fitness workout recovery. Additionally, the cosmetic nature of these types of OTC drug products serves as a significant source of innovation. For example, the inclusion of sunscreens into skincare products allows for consumer-friendly options that go well beyond the occasional beach day use. By expanding sun protection options for consumers, innovative cosmetic OTCs have enabled daily application, leading to increased protection from harmful UV exposure. Additionally, anti-acne facewash, anti-dandruff shampoo, skin protectant lotion, oral care toothpaste, and anti-perspirants are all OTC monograph drugs that consumers use as part of their daily routines to address basic health and hygiene. These are not products used infrequently for occasional treatment or for an intermittent need**. It is important that US consumers continue to have access to a selection of safe, effective, useful, pleasing, innovative, and affordable products that are suitable for all skin and hair types.**

PRACTICAL BUSINESS CONSIDERATIONS

The Modernization of Cosmetics Regulation Act of 2022 (MoCRA), which amended the Food Drug and Cosmetic Act of 1938, defaults cosmetic product classification to the highest regulatory product standard. This means products sitting at the nexus of OTC drug and cosmetic classification are viewed solely as OTC drugs by the FDA. Furthermore, businesses incorporating and claiming OTC monograph active ingredients in their products are required to register these products and their manufacturing locations with the FDA in accordance with OTC drug requirements outlined in MoCRA. The delineation in SB54 of OTC drugs and "medical product" definitions outlined in subsections (a)(6)(A) and (a)(6)(B) of *"ARTICLE 2: Covered Material and Covered Material Categories, Section 18980.2. Categorically Excluded Materials"* to exclude cosmetics is inconsistent with the federal definition of products at the interface of cosmetic and OTC drug classification.

OTC monograph drug manufacturing requires appropriate equipment, systems, and highly trained personnel to meet specific quality and regulatory compliance laws throughout development and manufacturing. As such, many small- to medium-sized brands selling OTC monograph drugs use *expert* contract manufacturers ("contract manufacturing organization facilities" or "CMO facilities") to produce their products. These brands and businesses are expected to follow strict testing and manufacturing protocols (many of which are similar to pharmaceutical drug manufacturing) that document and ensure monograph compliance. These include, but are not limited to, active ingredient stability testing under a variety of conditions, heavy metals testing, ingredient and batch release quality and conformity through each stage of blending and filling, final product release quality and conformity, and appropriate

finished goods labeling, lot coding, and expiration dating. It is a very costly and detailed process which requires years of testing and recordkeeping. Additionally, contract manufacturers who produce OTC products must also pay annual user fees to the FDA that assist in the agency's oversight of OTC drugs. These fees are not required for cosmetics-only manufacturers.

Importantly, the packaging used for OTC products must be able to protect the integrity of the formulated product and active ingredients throughout the manufacturing, supply, retail, and consumer environments until the expiration date of the product. It may not be possible to find alternative packaging materials that properly protect and preserve these formulated OTC products and meet the requirements of SB54. It is also very difficult to create reuse or refill solutions for OTC products, given the strict manufacturing and testing protocols needed to meet required hygiene and quality standards. As a consequence, it is difficult for Producers to participate in eco-modulation programs which could lower fees on these products.

BUSINESS IMPACT and ACCESSIBILITY

IBA is concerned that the exclusion of cosmetic OTCs from the Covered Product exemption and the lack of access to reduced fees will cause confusion for Producers. The inconsistent definition relative to the Federal classification may lead to misinformed compliance strategies, as cosmetic OTCs are clearly classified as drugs in FDA guidelines.

The unbalanced classification will also lead to higher compliance hurdles and fees for cosmetic OTCs compared to prescription drugs, which may result in cost pass-throughs, a decision not to sell in the state, or discontinuation of the product altogether for cosmetic OTC products. For California consumers who rely on cosmetic OTC drugs—and especially those who cannot afford prescription solutions—this may represent a significant cost increase or an availability challenge to treat common medical conditions.

The consolidation of added costs for cosmetic OTCs may drive Producers to remove FDA monograph ingredient actives from their formulations, backtracking on innovation and losing OTC drug benefits that have been incorporated into everyday cosmetics. For example, in products like skin creams or color cosmetics that include sunscreen actives or acne treatments, this may mean that consumers would lose the protection or treatments they rely on as part of their daily routine.

Finally, a reduction in cosmetic OTC production coupled with higher fee requirements could drive cosmetic contract manufacturers to refrain from producing OTC products. This could lead to CMO facilities exiting OTC manufacturing, which may result in a reduction in the number of compliant, responsible, and viable CMO facilities that can accommodate businesses of a wide variety of sizes and scale. Continued reduction in the number of qualified CMO facilities—especially those who can accommodate low minimum order quantity production runs needed by small businesses—are likely to lead to further reduced product choice for the consumer. A significant reduction in the number of OTC monograph drug manufacturers could also create supply bottlenecks and reduce redundancy if there is a limited number of CMO facilities making these products. Furthermore, small entrepreneurial brands with cosmetic/OTC products may not be able

to find applicable CMO facilities or may be locked out of production if larger customers take precedence in the production schedule. This will effectively reduce the variety of new products that offer innovation and serve smaller markets, diverse skin and hair types, or niche consumer needs.

CONCLUSION

IBA respectfully requests that the concerns of small and medium beauty businesses producing cosmetic OTC products are taken into account in the finalization of the text for **SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations.** Inclusion of cosmetic OTCs, including those with sunscreens, in the SB54 definition of OTC drugs, along with the associated covered product exemption, would alleviate definitional confusion, mitigate business exits from OTC monograph drug manufacturing, slow the increasing costs for cosmetic OTC products, and maintain choice for the consumer.

In addition to the matters discussed above that are tailored to the cosmetics and OTC drug product categories, IBA would like to reiterate our support of the coalition letter submitted by the Household & Commercial Products Association (HCPA) on behalf of industry organizations, including IBA. IBA would like to urge CalRecycle to give full consideration to the points raised in that letter, which IBA believes accurately represents the views of the broader industry.

IBA appreciates the opportunity to present this information. IBA remains a resource for CalRecycle at any time for insights and information regarding SB54 impact for small- to medium- sized businesses in the overlap between cosmetics and OTC monograph drugs. We would welcome further discussion at your convenience.

Response to O-58-1

CalRecycle rejects this comment for the reasons provided in response to comment B-11-3.

O-59: City of Los Angeles, LA Sanitation and Environment (Christine Batikian)

Comment O-59-1

Article 1: Definitions

Section 18980.1 Definitions

18980.1 (a)(2) - Definition of "Alternative Collection"

• Comment 1a: According to the Integrated Waste Management Act of 1989 (Public Resources Code 40000 et seq.), local jurisdictions have the authority to determine aspects of solid waste handling and the means those services are provided within their jurisdiction. As such, when it comes to SB 54 implementation, local jurisdictions should play a central role in decision-making around solid waste programs and services operating in their jurisdiction. As a result, we recommend that language be added to the regulations that all "alternative collection" programs should be implemented in consultation and with the consent of the local jurisdiction. We want to ensure that we limit risk of consumer confusion as well as impact on local government costs and

revenues. The presence of these "alternative collection" programs often come with an additional cost to our ratepayer, which is not the intent of the statute.
• Comment 1b: Current definition of "curbside collection" in Public Resources Code 42041(g) does not specify the location of collection, although curbside is used in the defined term. This creates confusion on whether collections done by local jurisdictions using alternate means, potentially not at curbside, is included. We recommend that language be added to the regulations to clarify that this collection by a local jurisdiction or recycling or composting service provider is regardless of the location of collection. This will acknowledge that local jurisdictions, or their designee(s), retain the right to sponsor or establish collections for covered materials that are using alternate means, other than at curbside, if desired.

Response to O-59-1

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2 and B-42-1. Also, regarding the location of collections by local jurisdictions, no clarification is needed in the proposed regulations because statute clearly defines "curbside collection" broadly, with no limitation as to the location of the collection. The definition of "alternative collection" in section 18980.1(a)(2) of the proposed regulations reflect that breadth by reinforcing that the only requirement to be defined as "curbside collection" is that it is conducted by or local jurisdiction or pursuant to a contract with a local jurisdiction.

Comment O-59-2

Article 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials
• Comment 2a: Public Resources Code Section 42041 (e)(2) lists packaging that are not considered "covered material" under the statute. This list does not specifically state packaging or packaging components used for products that comply with the United States Department of Agriculture or the United State Food and Drug Administration. As such, Section 18980.2 (a) (2) should be removed, and instead any applicable products shall have to go through the exemption process outlined in Section 18980.2.4 (Exemptions for Certain Covered Materials), which is not indefinite and is valid for only a specified period of time allowing for innovation to take place. This will ensure that local jurisdictions and ratepayers do not bear the burden to manage that waste.
Section 18980.2.1 Exclusion of Reusable and Refillable Packaging and Food Service Ware
• Comment 2b: Section 18980.2.1 (a)(4)(A) does not take into account collection at curbside by local jurisdictions. With the reuse sector being nascent, we do not want to rule out this method of collection. Currently, there are various investments being made and pilot programs exploring this option. We recommend adding language to the regulations to clarify that the requirements in paragraph (4) of subdivision (a) of Section 18980.2.1 would be satisfied if collection at curbside were made available either through a "curbside collection" or "alternative collection" program.

Response to O-59-2

Comment rejected. Regarding the proposal labeled "Comment 2a," CalRecycle rejects that proposal because it mischaracterizes both the statute and section 18980.2(a)(2) of the proposed regulations. That section is not based on Public Resources Code section 42041(e)(2). Rather, it is authorized under Public Resources Code section 42060(b), which requires CalRecycle to ensure that there is no conflict with U.S. Food and Drug Administration and U.S. Department of Agriculture regulations and that the regulations do not impose any requirement in direct conflict with any federal law or regulation. Moreover, the commenter appears to interpret 18980.2(a)(2) as applying to "components . . . that comply" with certain laws. That is not the effect of 18980.2(a)(2); rather, that provision applies to packaging for which no alternative is available to comply with those laws. Regarding the proposal to rely on the exemptions described in section 18980.2.4 instead, CalRecycle rejects that proposal for the reasons provided in response to comment I-59-2.

Regarding the proposal labeled "Comment 2b," CalRecycle rejects the proposal for the reasons stated in response to comment O-84-3.

Comment O-59-3

Article 8: Producer Responsibility Plan Requirements

Section 18980.8. Producer Responsibility Plan

• Comment 8a: Section 18980.8 (g)(2) identifies new or increased costs as eligible covered costs. However, this language is ambiguous and requires further clarification. We respectfully urge CalRecycle to provide clarity on what constitutes an "increased cost," and how the PRO will make such determinations consistently and fairly. The revised regulation defines an increased cost as one that is "of the same nature as one that would ordinarily exist, or be expected to exist, but is greater due to the requirements of the Act." It further states, "only the amount of the increase caused by such requirements is a covered cost." This raises several concerns for jurisdictions that have already made significant investments in programs and infrastructure aligned with SB 54's goals. As written, it may exclude costs that many local jurisdictions currently incur to support proper sorting and increase recovery of recyclable and compostable materials, including covered materials. Many local jurisdictions, including ours, are already engaged in collection, public education, technical assistance, and other essential services aimed at improving material recovery and reducing contamination. While the type of cost may not be new, the content, scope, or delivery of these programs may change significantly as a result of SB 54 implementation. Furthermore, there are many instances in which previous capital investments, such as collection vehicles and curbside bins/carts, will need to be leveraged to implement new SB 54 requirements. Without clearer guidance on eligible covered costs, early-implementing jurisdictions risk being penalized for their leadership. Costs associated with the collection, transport, sorting, and public education efforts that align with SB 54 could be deemed ineligible simply because they are not deemed "new" or "additional" by the PRO. This runs contrary to the equitable cost-shifting model envisioned by the legislation. We strongly recommend that CalRecycle clarify what constitutes an

"increased" cost, particularly for programs or services already in place but modified due to the Act, and clarify what direct and indirect costs are the responsibility of producers and what remains the responsibility of local jurisdictions and ratepayers. Currently, the PRO has all the discretion to determine eligible covered costs. Without these clarifications, the regulations risk failing to make local jurisdictions whole and may lead to costly, time-consuming disputes. Clear, consistent, and equitable cost treatment is essential to fulfilling SB 54's intent and ensuring successful implementation.
• Comment 8b: Section 18980.8(g)(4) states that the process for determinations on covered costs and issuing payment should be done through reasonable periods. We recommend CalRecycle add specificity to describe what constitutes a "reasonable period." Local jurisdictions in particular need clear expectations and timelines due to their required administrative processes.
• Comment 8c: Section 18980.8(g)(8) states that the PRO will notify the local jurisdiction of costs identified as those incurred by a recycling service provider acting on behalf of that jurisdiction. To prevent duplicative payments and to protect ratepayers, ensuring that recycling service providers are not compensated for services already funded through local rates, we recommend strengthening this section. Specifically, we propose adding language requiring the PRO to not only notify the local jurisdiction when a cost covering request is received, but also to consult with the jurisdiction prior to approving the reimbursement. This consultation will help confirm that the requested costs are not already being covered by ratepayer funding, thereby ensuring transparency and fiscal accountability.

Response to O-59-3

Regarding section 18980.8(g)(2), CalRecycle rejects this comment for the reasons stated in response to comment O-56-3. Also, the commenter is incorrect that the "PRO has all the discretion to determine eligible covered costs." To the contrary, all determinations are subject to dispute, including pursuant to section 18980.8(g), with an arbitrator empowered to make ultimate decisions. No further clarification is necessary with respect to "direct" versus "indirect costs" because nothing in the proposed regulations or statute suggest that distinction is relevant.
Regarding section 18980.8(g)(4), CalRecycle rejects this comment for the reasons provided in response to comments B-29-3 and O-37-2.
Regarding section 18980.8(g)(8), CalRecycle rejects this comment for the reasons provided in response to comment I-51-1.

Comment O-59-4

Article 10: Registration and Data Reporting Requirements
Section 18980.10.1 Data Reporting Submission
• Comment 10a: Section 18980.10.1 mentions "reporting entities". However, it is unclear whether local jurisdictions are included within this definition or if they will have any direct reporting responsibilities to CalRecycle. We respectfully request that CalRecycle clarify whether local jurisdictions will be required to submit any reports or data as part of the implementation of SB 54. If local jurisdictions are expected to provide information, please specify the nature, frequency, and scope of these reporting requirements.

Response to O-59-4

Comment rejected. The definition of "reporting entity" is clearly established in section 18980.1(a)(22). Additionally, the nature, frequency, and scope of the reporting requirements for "reporting entities" in section 18980.10.1 is sufficiently clear. Therefore, no change is necessary to the implementation or enforcement of the Act as the term in question already clearly addressed. and aligned with sections 42020 through 42100 of the PRC..

Comment O-59-5

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions
Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers

• Comment 11a: Section 18980.11(a) states that local jurisdictions must include recyclable and compostable covered materials in their collection and recycling programs "no later than the date the Department first approves a PRO's plan." Since this date could occur any time prior to January 1, 2027, and is not fixed, local jurisdictions face uncertainty and potentially insufficient time to prepare for the required changes. Given that the next update to the Covered Material Category (CMC) list is expected by January 1, 2026, jurisdictions may have less than one year to incorporate any newly designated recyclable or compostable materials into their programs. In contrast, Section 18980.11(c) allows one year from the date of a change to the CMC list for jurisdictions to come into compliance for later CMC list updates. We recommend revising the language in Section 18980.11(a) to read: "No later than one year after the date the Department first approves a PRO's plan." This change would provide consistency with Section 18980.11(c) and allow local jurisdictions sufficient time to update acceptability lists and adjust collection practices. Importantly, implementing these changes requires both time and resources, and funding from the PRO must be available before such modifications can be reasonably expected.

• Comment 11b: Section 18980.11(b) states that a local jurisdiction is compliant if their collection and recycling programs "collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities." However, additional clarification is needed regarding the terms "collect" and "transfer" to ensure jurisdictions clearly understand what constitutes compliance and how it will be evaluated by the Department. Specifically, the definition of "collect" is ambiguous. Does it mean that the material is listed as accepted in some public education materials, or must it appear in all outreach materials, including printed guides, websites, and cart/bin graphics (which can take years to update)? Furthermore, the covered material categories are quite broad and can encompass many materials. We request that CalRecycle provide specific and practical guidance on these definitions, including how collection and transfer activities will be assessed for compliance purposes. Clear direction will help ensure jurisdictions can make necessary adjustments in a reasonable timeframe and avoid unintended enforcement or funding issues due to interpretive differences.

Response to O-59-5

Comment rejected. Regarding comment 11a, the requested change (delaying effectiveness of Public Resources Code section 42060.5(a) until one year after the approval of a PRO plan) contravenes statute, which contains no provision allowing CalRecycle to universally pause obligations under Public Resources Code section 42060.5(a). The delay would unreasonably interfere with the PRO's accomplishment of its statutory obligations, such as achieving a 30 percent recycling rate for plastic covered material by January 1, 2028, as required under Public Resources Code section 42050(c). It would also be incongruous with the statutory requirement that CalRecycle publish the covered material categories list far in advance of that date. Lastly, Public Resources Code section 42060.5(b) exemptions (addressed in section 18980.11.1 of the proposed regulations) fully address the commenter's concern over compliance challenges. Local jurisdictions can initiate the process for obtaining an exemption at any time.

Regarding comment 11b, the assertion that "collect" is ambiguous is not credible. That word cannot reasonably be read to require anything short of physically collecting materials, which must happen for a local jurisdiction or recycling service provider to do what section 18980.11(b) describes: They must transfer the covered material to responsible end markets or intermediate supply chain entities. Likewise, the word "transfers" is not ambiguous. It has a plain meaning and cannot reasonably be read in context of 18980.11(b) to refer to anything short of physically providing the covered materials to the responsible end market or intermediate supply chain entity.

Regarding the request for "specific and practical guidance," no revision to the proposed regulations are necessary because CalRecycle can provide additional resources, such as FAQs and demonstrative examples of applications of the proposed regulations, outside the formal rulemaking process.

Comment O-59-6

Article 13: Enforcement Oversight by the Department and Administrative Civil Penalties
Section 18980.13. Compliance Evaluation and Determination

• Comment 13a: SB 54 does not reference local jurisdictions or recycling service providers as entities subject to enforcement. Article 5 of the statute consistently refers to producers and Producer Responsibility Organizations (PROs) in connection with violations. Given this, it is inappropriate and contrary to the intent of the law for local jurisdictions to be subject to administrative penalties of up to $50,000 per day, per violation. This level of enforcement applied to jurisdictions undermines the central purpose of SB 54, as stated in Section 42040(a) of the statute, to shift the financial burden of managing packaging and food service ware away from local governments and ratepayers and onto producers. Local jurisdictions are not the primary subject of responsibility or enforcement under SB 54, and applying identical penalties to them as the PRO and producers is inconsistent with both the letter and the spirit of the law. We strongly recommend that CalRecycle either remove local jurisdictions from the scope of administrative enforcement actions, or substantially reduce the maximum daily penalties applicable to local jurisdictions.

Response to O-59-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change to remove local jurisdictions from the scope of administrative enforcement actions, or substantially reduce the maximum daily penalties applicable to local jurisdictions, is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction or recycling service provider, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant local jurisdiction or recycling service provider consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction or recycling service provider will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-59-7

General Comment: Contamination Standards and Sorting Quality

• To uphold the intent of Public Resources Code Section 42041(aa)(4)(A), CalRecycle should define uniform contamination thresholds and sorting efficiency standards across the state. This consistency will improve recycling outcomes, reduce processing costs, and ensure accurate reporting of materials truly diverted from landfill.

Response to O-59-7

Comment rejected. Public Resources Code section 42041(aa)(4)(A) authorizes, but does not require, CalRecycle to adopt regulations addressing covered material out of state and exported to other countries. In any event, that provision is expressly not about material processed within the state, so it is not relevant to the proposal to set uniform contamination thresholds and efficiency standards "across the state." For materials within the state, even assuming CalRecycle has authority to set contamination and sorting efficiency standards, setting rigid

standards is unnecessary because market actors already have incentive to achieve the greatest efficiency and lowest costs possible. The PRO's mandate to satisfy the requirements of Public Resources Code section 42050 incentivizes the PRO to further efforts to improve efficiency and lower costs, and the statute, the proposed regulations, and other laws applicable to solid waste handlers already require the PRO and others to achieve accurate reporting.

O-60: Consumer Brands Association (Erin Raden)

Comment O-60-1

On behalf of a broad range of producers of healthy, nutritious, California-grown products, who are committed to food safety and quality, we appreciate the opportunity to provide feedback on California's Department of Resources Recycling and Recovery's ("CalRecycle") SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. We are committed to supporting the goals of SB 54 and appreciate CalRecycle's continued stakeholder engagement throughout this rulemaking process.

We are encouraged to see the categorical exclusions for FDA and USDA regulated products maintained in the most recent version of the permanent regulations. The statute clearly recognizes the fact that some producers will have challenges in complying with SB 54, and that among the most significant of these challenges are potential conflicts with federal law. This is especially true regarding food packaging which must meet rigorous safety and technical standards required by laws including but not limited to, the Food, Drug, and Cosmetic Act, the Federal Meat Inspection Act, and the Poultry Products Inspect Act. The Legislature therefore rightly recognized that exclusions are warranted for producers that would otherwise have to choose between compliance with state or federal law.

As you finalize these regulations, please consider the functional impact of these packaging types for food safety, quality, and shelf-life, the importance of minimizing organic waste, and the need to minimize increased cost to consumers, and maintain the categorical exemptions. Thank you again for your willingness to engage with us on this important issue. We look forward to continuing to work with you ensure the safety of and consumer confidence in the food supply while meeting the goals of SB 54.

Response to O-60-1

This comment must be rejected, and no response is required, because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-61: Can Manufacturers Institute (Greg Hurner)

Comment O-61-1

October 7, 2025

Ms. Csilla Richmond
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act
Permanent Regulations
Department of Resources Recycling and Recovery,
Regulations Unit
1001 “I” St., MS-24B
Sacramento, CA 95814

VIA Public Comment Form

RE: August 2025 Proposed SB 54 Regulations

The Can Manufacturers Institute (CMI) appreciates the opportunity to comment on the proposed regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations Division of Circular Economy.

CMI is the U.S. trade association of the metal can industry and its suppliers. Our members employ 28,000 workers in 33 states and produce more than 135 billion steel and aluminum cans annually for the food, beverage, aerosol, and general packaging markets.

The metal can industry hopes our responses and insights will ensure CalRecycle does not inadvertently hinder robust metal can recycling and circularity systems. The law intends to increase recycling and reduce the use of plastic packaging. The suggested changes, specifically the need to amend the definition of “plastic,” add a definition of “plastic packaging,” and will prevent potential harm.

CMI’s comments are focused explicitly on metal cans subject to SB 54, which include product categories such as human and pet food, as well as aerosol products. It's important to note that aluminum beverage cans are exempt from our comments as they are already subject to the California Beverage Container Recycling & Litter Reduction Act.

Sections 18980.2.2. Exclusion of Certain Types of Packaging and 18980.2.6. Covered Material Category List Recommendations
CMI requests that “trade associations representing covered materials” be listed along with the PRO or Independent Producer on pages 29 (3), page 35 (a)(b), page 44 (h), page 45 (h)(1) (2), and page 47.

Section 18980.2.2. Exclusion of Certain Types of Packaging
In subparagraph (b), CMI supports the description of de minimis and the criteria for being considered de minimis. However, it may improve clarity to provide the example of

a metal can (similar to how a box for a board game is provided for meeting the 5-year storage requirement in subparagraph (a) of Section 18980.2.2. As de minimis and associated criteria was discussed in various workshops, the metal can was the most frequent example that had broad agreement from stakeholders and the Advisory Committee. This is because non-CRV metal packaging is easily sorted from the recycling stream, doesn't require the removal of coatings, labels or nondetachable components to be recycled, and has robust end markets.

Response to O-61-1

Comment rejected. Regarding the definition of "plastic" and "plastic packaging," the commenter alludes to suggested changes, but those suggestions do not appear anywhere in the submission, so CalRecycle cannot respond to them. CalRecycle rejects the commenter's proposal regarding section 18980.2.2 because it is vague. CalRecycle cannot discern what it would mean for a trade association to "represent covered materials." If the commenter's suggestion is that a trade association should be considered an agent of a group of producers, there is no need for a regulation to that effect because a producer's agent is, as a matter of law, one authorized to act on behalf of the producer; the proposed regulations do not restrict CalRecycle's flexibility to recognize a trade association submitting requests or applications on behalf of specific entities that authorize the association to act on their behalf. CalRecycle rejects the commenter's section suggestion regarding section 18980.2.2 because it, in effect, requests a categorical exemption for metal cans. But "metal cans" do not constitute a ubiquitous category and, in any event, are not themselves of "de minimis weight or volume." At most, metal cans are an example of a type of packaging that might incorporate components having de minimis weight of volume. In that sense, metal cans are a useful example for CalRecycle to highlight when explaining how section 18980.2.2(b) applies in various circumstances, but a regulation is not necessary for CalRecycle to do so.

Comment O-61-2

Section 18980.6.7. Eco-Modulated Fee and Fee Schedule

Eco-Modulation Fee Schedule

In subdivision (b) on page 97, CMI urges CalRecycle to implement the eco-modulation fees immediately, rather than delaying for two years. Doing so will encourage companies to adopt more recyclable packaging immediately, rather than postponing investments. It also unfairly punishes producers who switched packaging early in anticipation of a lower fee under the program.

Malus Fee Inappropriately Applies Proposition 65 Listings Without Considering Exposure Thresholds.

In subdivision 18980.6.7(i), on page 100, the proposed language requires Producer Responsibility Organizations (PROs) to assign malus fees to producers based solely on the presence of chemicals listed under Proposition 65. This approach disregards the fundamental legal structure of Proposition 65, which is explicitly exposure-based, not presence-based. As such, this regulatory approach is inconsistent with state law,

undermines scientific standards for risk assessment, and could lead to penalties for materials that pose no significant risk as determined by the California Office of Environmental Health Hazard Assessment (OEHHA). Subdivision 18980.6.7(i) of the SB 54 regulations fails to reflect this essential statutory structure. Specifically, it proposes that malus fees be assessed based on the presence of Proposition 65-listed chemicals in covered material, regardless of whether actual exposure would occur at levels that exceed OEHHA's established safety thresholds.

CMI supports the Consumer Brands Association's recommended solution of ensuring alignment with California law and sound risk-based regulatory principles. CMI urges CalRecycle to revise Section 18980.6.7(i) to conform with Proposition 65's exposure-based framework. The following language is recommended:

(h) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code at levels that result in exposure to consumers in excess of the No Significant Risk Level (NSRL) for carcinogens or the Maximum Allowable Dose Level (MADL) for reproductive toxicants, as established by the Office of Environmental Health Hazard Assessment (OEHHA).

This revised language ensures that the regulatory structure of SB 54 remains consistent with the statutory and scientific framework underpinning Proposition 65. It respects the role of OEHHA as the expert agency in toxicological risk assessment, avoids duplicative or unjust penalties for compliant businesses, and maintains public trust in California's rigorous but science-based approach to chemical safety and environmental health.

Response to O-61-2

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060 of the Act, and no change is necessary to the implementation of the Act. To the extent this comment recommends implementing the eco-modulated fees immediately, see the response to comment B-6-6. To the extent this comment recommends revising section 18980.6.7(i) of the proposed regulations to incorporate an exposure-based framework, see the response to comment B-11-9.

Comment O-61-3

Additional Comments for Consideration

Include Exemptions for Charitable Organizations

CMI and Consumer Brands reiterate the importance of an exemption for nonprofit organizations that meet the terms of Section 501(c)(3) of the U.S. Internal Revenue Code. Within the existing regulation language, a nonprofit organization that produces goods under its own brand or purchases goods from other for-profit organizations for the sake of donation would be required to financially contribute to the state's extended producer responsibility program, though the products are distributed to low-income

individuals and families through food banks and other charitable organizations. These products are crucial for low-income families in California and throughout the United States. Requiring a charitable organization to fund an EPR program creates an undue burden on these nonprofit entities, ultimately constraining the resources available to support the individuals they serve. Other states' extended producer responsibility programs, including those established in Maine and Oregon, currently exempt nonprofit organizations.

Solution: We recommend that CalRecycle adopt exemptions within its proposed regulations for nonprofit charitable organizations that meet the criteria of Section 501(c)(3) of the U.S. Internal Revenue Code, thereby avoiding the exhaustion of valuable resources that support low-income families and individuals within the state.

CMI hopes our responses and insights will ensure the proposed regulatory text does not inadvertently disadvantage metal cans. Unlike other material types, metal cans are not a problematic package. Metal cans bring value to recycling programs and have healthy and robust end markets. The law must recognize these attributes, and their use should be encouraged to help California reduce the amount of plastic and non-recyclable packaging used in the state.

Response to O-61-3

CalRecycle rejects this comment as the requested changes for additional exemptions and requirements are beyond the scope of the Department's rulemaking authority, and both exceed and conflict with the statutory requirements for qualifying as a small producer.

O-62: NRDC (Renee Sharp)

Comment O-62-1

Zoe Heller, Director
Department of Resource Recycling and Recovery
1001 I Street | Sacramento, CA 95814

Submitted electronically on October 7, 2025, via CalRecycle Public Comment form.

Subject: NRDC Comments on SB 54 Proposed Permanent Regulations for Plastic Pollution Prevention and Packaging Producer Responsibility Act

Dear Director Heller:

The Natural Resources Defense Council (NRDC) respectfully submits the following comments in response to CalRecycle's Proposed Permanent Regulations for SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

As noted in our previous comments, some of the proposed changes since the February 27 draft of regulations are highly problematic and even in conflict with the law. The last set of proposed permanent regulations were submitted to the Office of Administrative Law (OAL) on February 27, 2024, and published in the California Regulatory Notice Register on March 8, 2024. However, they were not finalized, and a new rulemaking period was initiated. New permanent regulations were submitted to the Office of Administrative Law (OAL) on August 12, 2025, and published in the California Regulatory Notice Register on August 22, 2025.1 Significant changes to the current Proposed Regulations are required for them to be aligned with both the spirit and the letter of SB 54.

Thank you for your consideration of our comments as detailed below.

1) Proposed language addressing "chemical recycling" is inconsistent with the law and undermines the statute's legislative intent.

Dramatically changed language in the proposed regulations weakens protections against "chemical recycling," compared with the October 14, 2024 proposed regulations, which were clear that these technologies would be prohibited if they generated more hazardous waste than mechanical recycling. These changes to the language are inconsistent with the statute and with legislative intent.

The statute requires CalRecycle to exclude technologies that generate significant amounts of hazardous waste; the proposed regulations fail to do so and are in conflict with the statute. The proposed regulations concerning hazardous waste fall short in a number of other ways that should also be addressed.

To address these shortcomings and to provide clarity on the requirements, we recommend that the regulations should set a categorical prohibition on "chemical recycling" technologies, including gasification, pyrolysis, and solvent-based technologies. Such a categorical prohibition would satisfy the statute's directive to exclude plastic recycling technologies that produce significant amounts of hazardous waste; its limitations on technologies that involve combustion, incineration, fuel production, or energy generation; and its requirement that "[t]he department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." As we have noted in previous comments, there is significant and strong legislative history that makes clear that the statute's definition of recycling excludes these "chemical recycling" technologies.

A) Defining "significant amounts" of hazardous waste based on the concept of "risk" and "waste management" conflicts with the intent and statutory language of SB 54.

The definition of "significant amounts of hazardous waste" in proposed Section 18980.4.1(d)(1) is contrary to statute. The proposed language reads as follows:

‘“[S]ignificant amounts of hazardous waste” means hazardous waste as defined in Title 40 of the Code of Federal Regulations Section 261.3 that presents a substantial risk of harm to public health, or of contamination of the environment.’ However, SB 54’s language refers to the quantitative amount of hazardous waste, not the subjective “risk” associated with it; the added wording introduces new considerations not in the SB 54 statutory language and is inconsistent with the statute, and it fails to grapple with the concept of “amounts” that’s actually in the statute.

“Risk” introduces additional considerations that are not fairly encompassed within "amounts," which is focused on quantity. This is contrary to statute. This applies equally to proposed Section 18980.4.1(d)(1)(B) which also focuses on these factors of risk of harm to public health or the environment2 in defining “significant *amounts*.” (Emphasis added.) Harm to public health and the environment are separate factors in the definition, independent of amount, which is specifically and separately articulated.3

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

Equating these separate factors renders “amount” redundant, and CalRecycle may not ignore statutory language or erase its application. Shifting the standard for what is considered a viable technology from the amount of hazardous waste produced to how and the extent to which that waste is managed only addresses waste that is improperly managed, which is inconsistent with the statute’s explicit consideration of the amount of hazardous waste generated.

In addition, the proposed regulations shift the emphasis from production of hazardous waste to its management, as noted by Senator Ben Allen, the author of SB 54, and many of his colleagues in a letter to CalRecycle, 4 explaining how the agency is violating the statute in its interpretation of the meaning and intent of “significant amounts of hazardous waste”:

SB 54’s statutory language specifically prohibits the use of plastic recycling technologies that generate significant amounts of hazardous waste by directing that: ‘the regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.’ (emphasis added). The draft regulations fail to comply with this requirement on multiple counts. First, the criteria enable — not exclude — technologies that produce significant amounts of hazardous waste. The regulations unlawfully shift the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and ‘presents an imminent and substantial risk of harm to public health or to the

contamination of the environment' does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in 'substantial compliance with an applicable permit' does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste.

B) The exemption for compliance with permits further exacerbates these conflicts with the law.

Section 18980.4.1(d)(1)(b) effectively states that if a producer is in compliance with an applicable permit to produce and dispose of hazardous waste, then that producer is not generating a "significant amount of hazardous waste," meaning that that technology is allowed under the regulations no matter how much hazardous waste is produced. This language negates a provision in statute which requires CalRecycle to establish criteria "to exclude plastic recycling technologies that produce significant amounts of hazardous waste," and therefore this language on compliance with a permit should not be included in the regulations. If it were sufficient to comply with existing laws, the phrase "significant amounts of hazardous waste" would be rendered superfluous or made redundant and would have no meaning in the statute, as facilities are already required to comply with the law. Moreover, compliance with permitting may be different in different jurisdictions and this provision applies to end markets, which may be outside California. This would, in effect, impose unequal requirements concerning the amount of hazardous waste allowed for the same technology in different jurisdictions. This illogical result not only creates inconsistent requirements for the same technology, but it is also contrary to the statute's focus on amounts of hazardous waste produced as a marker of whether a technology should be allowed to count as recycling.
3 "The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, *environmental impacts*, environmental justice impacts, and *public health impacts.* The regulations shall include criteria to exclude plastic recycling technologies that produce significant *amounts* of hazardous waste." (Emphasis added.)

4 Attached and available at:
https://cawrecycles.sharepoint.com/:b:/s/CaliforniansAgainstWaste/Eewm9LW5GwNHjZVgT4PxIysBP_Y nBopphpthLTOBVSA-cQ?e=rD3ft8.

C) Using the federal definition of hazardous waste rather than California definition does not comport with the law.

The proposed definition of hazardous waste is reliant on the federal definition of hazardous waste and not the California state definition. While federal thresholds can be useful in certain contexts and for certain purposes, here the use of federal thresholds negates part of the scope of SB 54. The SB 54 statute does not specify compliance with a federal definition of hazardous waste; given that SB 54 is a California law and it refers to "hazardous waste," it follows that law refers to the California state definition given that this is a California law and program. The statute does not exclude California hazardous

waste nor otherwise narrow the scope of “hazardous waste.” Therefore, the Agency has no authority to exclude the consideration of California hazardous waste. Because the California definition of hazardous waste is more stringent than the federal definition and has been so for decades, using the federal definition would illegally allow technologies that generate wastes that are not considered federally hazardous but that are hazardous based on the California definition to count as recycling. CalRecycle has suggested that the reason that the federal definition should be used is that facilities and end markets may be located outside of California and are subject to federal reporting requirements which are different from state reporting requirements. However, this is contrary to the plain language of the statute. In addition, even the policy argument that CalRecycle puts forward is not persuasive given that many other California-based specifications must be complied with under this legislation.

D) The definition of recycling for technologies other than mechanical recycling relies inappropriately on ISO standard 59014:2024.

The Statement of Reasons bases the reference to the ISO standard on the language in the statute that states that the “department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.” However, ISO 59014:2024 does not address the majority of these criteria and is extremely weak even for those that are addressed in the standard.

Proposed Section 18980.4.1(d)(2) states that in order to be considered recycling, a technology that is not a mechanical recycling technology must operate in a manner consistent with ISO 59014:2024. However, ISO 59014 is not specific to recycling, nor does it define recycling. Instead, the standard proposes optional qualitative guidelines for material recovery facility operators (e.g. recommendations on types of data to collect and on types of policies to include) and is non-binding. The standard contains several problematic elements, including characterization of energy recovery as something other than a form of disposal, as well as promotion of the use of a narrow lifecycle analysis scope which omits consideration of specific environmental safety, toxic materials, and human health impacts. Even the suggestion of allowing incineration with energy recovery would be explicitly contrary to the statute’s definition of recycling which excludes combustion, incineration, energy generation, fuel production, and other forms of disposal (Public Resources Code § 42041(aa)(2)).

Thus, Section 18980.4.1(d)(2) does not help cure the other shortcomings identified in our comments and does not speak to the statutory criteria that the Statement of Reasons relies upon.

E) Infrequent reporting of facility level information could allow skirting of thresholds for “significant amounts of hazardous waste.”

Under the proposed regulations, the PRO approves “chemical recycling” technologies, with review by CalRecycle. The proposed method whereby “chemical recycling”

technologies get approved is by submitting facility-level information about hazardous waste generation (among other information) to the Producer Responsibility Organization (PRO). Assuming CalRecycle rectified the other unlawful, extrastatutory, proposed provisions noted above, it is conceivable that the current proposed language (Section 18980.4.1(d)(4)(D)) would enable a pilot facility to submit data showing minimal hazardous waste generation, and if the technology is approved, would grant it allowance for up to 5 years (i.e. the window between approvals under the proposed regulations). During this time, a plant could massively scale up in size and come to produce significant quantities of hazardous waste, which it may not have been doing at a sufficient threshold in its nascency to justify exclusion of the technology from "recycling" previously. It is also not clear if the submitted information would be provided to the public, which undermines the deliberative democratic process contemplated by SB 54.

To avoid the skirting of limits on significant amounts of hazardous waste, the regulations must be more stringent about technologies needing to re-enter the approval process if facilities substantially increase in size or scale, change or add technologies, or begin processing different covered material types. Further, this information must be made available to the public for transparency on the issue of costs, hazardous wastes, and climate impacts.

F) CalRecycle should include a definition of "Recycling" in the regulations that categorically excludes specified chemical recycling technologies and reflects SB 54 language and legislative history.

CalRecycle can address some of the shortcomings above by explicitly including a definition of "recycling" in the regulations and categorically excluding specified chemical recycling technologies because this would reduce the weight placed on the criteria for "significant amounts of hazardous waste." While the definition of recycling in SB 54 is referenced in the proposed regulations, little additional guidance is provided. Given the law's directive to the agency and the significant legislative history on this definition, we urge CalRecycle to include provisions defining the term in light of the legislative history, clearly identifying which technologies do not count as recycling.

Such clarity is important because these provisions of the law will be implemented in practice by producer responsibility organizations that will need clear rules of the road. That need for clarity will be even greater for certifiers that will be required to ensure compliance with the law's direction that: "For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision."5

The Senate Floor Analysis states that "[t]he definition of recycling specifically excludes combustion, incineration, energy generation, fuel production, and other forms of disposal. Additionally, CalRecycle is required to develop regulations that exclude plastic recycling technologies that generate significant amounts of hazardous waste. *This definition is intended to exclude technologies, such as gasification, pyrolysis, and*

*solvent-based technologies."*6 (Emphasis added.) The Assembly Floor Analysis has identical language.7

In addition, a Letter to the Journal from the author states:

Pursuant to proposed California Public Resources Code Section 42041(aa) in SB 54, "recycling" is intended to only include technologies that return or maintain plastic materials within the circular economy. SB 54 specifically states that recycling does not include incineration or combustion of plastic waste (Section 42041(aa)(2)) and requires the regulations to exclude from recycling the technologies that generate significant hazardous waste (Section 42041(aa)(5)). Technologies using pyrolysis, gasification, solvolysis, and similar technologies that involve combustion and incineration, as well as the generation of hazardous waste, are therefore prohibited from being considered 'recycling' under SB 54.

Furthermore, proposed Section 42021(aa)(2) excludes from the definition of "recycling," technologies that produce energy or fuels, and other forms of disposal, which includes technologies like pyrolysis and gasification.

In addition, by referencing the definition of disposal in PRC 40192(b), the proposed definition of "recycling rate" (Section 42041(ab) of SB 54) provides specific direction to consider transformation and engineered solid waste management (ESWM) conversion of covered material as disposal. Transformation, as defined by Public Resources Code Section 40201, means incineration, pyrolysis, distillation, or biological conversion other than composting.8

5 Public Resources Code § 42041(aa)(4)(C).
6 Senate Floor Analysis, 06/29/22, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54.
7 Assembly Floor Analysis, 06/29/22, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54.

This legislative history is further bolstered by the fact that pyrolysis facilities were at the time of SB 54's passage, and still are, regulated as incinerators under the federal Clean Air Act and are recognized to involve combustion,9 and that pyrolysis and gasification facilities are often engaged in fuel production or energy generation, produce significant amounts of hazardous waste, and are associated with significant health community impacts, particularly in environmental justice communities.10 The floor analyses for SB 54 recognize these impacts: "Chemical recycling technologies have significant environmental impacts, particularly on the surrounding communities, including toxic air emissions, GHG emissions, and hazardous waste generation."11

Given the directives in the law and the legislative history, we urge CalRecycle to include a definition of recycling in the regulations. We propose the following language at a minimum, but encourage CalRecycle to consider additional criteria to exclude plastic recycling technologies that produce significant hazardous waste and to encourage

technologies that minimize the other listed impacts: *"Recycle" or "Recycling" has the same meaning as section 42041(aa) and excludes technologies such as pyrolysis, gasification, solvolysis, solvent-based technologies, and similar technologies.*

(This definition should additionally be reflected in the methodology for recycling rate determination proposed in Section 18980.3.2 and in the criteria for responsible end markets outlined in Section 18980.4. Currently, the recycling rate determination considers material "recycled" if the material is accepted by a responsible end market, but neither section references the statutory definition of recycling, particularly the certifications and documentation required by that definition, creating gaps that could undermine the law.)

Including a definition of "recycling" as discussed above would also be consistent with statutory language in SB 54 that states that the "department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." In 2023 scientists from the DOE's National Renewable Energy Laboratory published a peer-reviewed study that compared the technical, economic, and environmental metrics for mechanical recycling and "chemical recycling" when attempting to recycle waste plastic into new plastic.12 The study concluded that "mechanical recycling offers energy use and [greenhouse gas] emissions an order of magnitude lower than the other recycling technologies for all plastics, as well as low [energy usage], land use, toxicity, and water use." This finding by government scientists underscores that the only way the regulations can comply with SB 54 is by encouraging mechanical recycling over so-called "chemical recycling."

8 Attached to this submission.
9 88 FR 36524, June 5, 2023 (withdrawing proposal to exclude pyrolysis facilities from the definition of
incinerators). EPA describes "pyrolysis/combustion units" as "two chamber incinerators with a starved
air primary chamber followed by an afterburner to complete combustion."
10 NRDC, Recycling Lies, February 2022, available at
https://www.nrdc.org/sites/default/files/chemical-recycling-greenwashing-incineration-ib.pdf; Beyond Plastics & International Pollutants Elimination
Network (IPEN), Chemical Recycling: A Dangerous Deception, October 2023, available at
https://www.beyondplastics.org/publications/chemical-recycling; NRDC, More Recycling Lies, March
2025, available at: https://www.nrdc.org/sites/default/files/2025-03/More_Recycling_Lies_IB_25-02-A_07_locked.pdf
11 Senate Floor Analysis, 06/29/22, available at
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54; Assembly Floor
Analysis, 06/29/22, available at

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54.

Response to O-62-1

CalRecycle rejects this comment for the reasons articulated below and in response to each of the comment's subparts. The proposed regulations are consistent with the requirements set forth in the Act, and the recommended changes are not necessary to the implementation or enforcement of the Act. Subsection 18980.4.1(d) and its constituent parts reasonably implement the requirement of PRC section 42041(aa)(5).

Section (1)

PRC Section 42041(aa)(5) requires that the regulations include "criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." The section does not otherwise present any basis for what amount of hazardous waste generation is "significant." CalRecycle's regulations establish criteria that reasonably effectuate the statutory text and make it more specific as follows:

- The regulations assign meaning to "significant amounts of hazardous waste" with reference to the federal definition of hazardous waste and with consideration of whether the waste poses "a substantial risk of harm to public health, or of contamination of the environment." (18980.4.1(d)(1).) The rationale for this provision, as well as the emphasis on management and disposal of hazardous waste (18980.4.1(d)(1)(B)), is discussed further in response to the sub-comments.

- The regulations clarify the range of technologies in consideration: those that are not mechanical technologies that were in use as of the effective date of the Act. (18980.4.1(d) and (d)(1)(A).) As commenters also point out, the Act's legislative history establishes that one focus of 42041(aa)(5) is chemical-based recycling. Using mechanical recycling as practiced when the Act took effect as a baseline is appropriate because those technologies are well established as having acceptable ranges of environmental impacts, whereas the likely ranges of hazardous waste generation from emerging chemical-based technologies and mechanical ones not yet practiced in the state are unsettled.

- The regulations establish that a facility using a technology producing hazardous waste may only be considered recycling if it complies with all other requirements established in Article 4 of the regulations. (18980.4.1(d)(3).) Article 4 establishes criteria to ensure that responsible end markets operate in a manner that benefit the environment and minimize risk to public health and worker health and safety. Additionally, the technology may not be considered recycling unless it operates in a manner consistent with ISO 59014.2024, which is a document that establishes principles, requirements, and guidance for the sustainable, traceable conduct of materials recovery. Together, these provisions

ensure that facilities using a new technology operate consistent with appropriate permitting requirements and best practices.

• The regulations require a facility to submit certain information to the PRO or Independent Producer before its technology may be considered recycling. (18980.4.1(d)(4).) The information includes data related to the weight of hazardous waste generated at the facility. The facility must continue to report this data to the PRO or Independent Producer annually. (18980.4.1(d)(6).) The data allows the PRO or Independent Producer to review the quantity of hazardous waste produced by the facility, in addition to evaluating the risk its technology poses to public health and the environment.

• In its plan, the PRO or Independent Producer must justify its conclusion that use of a particular technology does not produce significant amounts of hazardous waste. (18980.4.1(d)(5).) This provision ensures that the technology is carefully evaluated, and relevant data considered, prior to the facility using the technology being determined to be recycling covered material.

Subsection (A)

CalRecycle rejects this comment. CalRecycle's proposed definition of "significant amounts of hazardous waste" in Section 18980.4.1(d)(1) is consistent with the statutory provision.

The statute does not further define the phrase "significant amount." Establishing that the statutory phrase "significant amounts of hazardous waste" must be evaluated in relation to the risk posed by the hazardous waste is reasonable. Classification of waste as "hazardous" to begin with relates to its effects on health and the environment and laws promulgated to address hazardous waste aim to avoid and reduce this risk. Therefore, without more specific direction in the statute, the risk to public health and the environment from the amount of hazardous waste generated by a technology is a logical basis for evaluating the technology. Conversely, an evaluation based purely on quantity of hazardous waste generated cannot capture the effect of small amounts of hazardous waste that nevertheless poses significant risk to public health or the environment.

Commenters assert that the following language in the statute supports their position that CalRecycle's definition of "significant amounts" is inconsistent with statute: "The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts" (emphasis added.). However, only the second sentence of PRC section 42041(aa)(5) mentions the "criteria" requirement, and that requirement only concerns exclusion of "plastic recycling technologies that produce significant amounts of hazardous waste. So, CalRecycle disagrees that the reference to "minimizing generation of hazardous waste" and other environmental, environmental justice, and health impacts in the statute precludes a definition of "significant amounts of

hazardous waste" that relies on risk. In any event, the regulations implement the cited provision through section 18980.4 generally. (See, e.g. §18980.4(a)(3).). The requirement to develop criteria, not just encourage behavior, specific to hazardous waste must be considered and effectuated separately and cannot be read to incorporate the previous sentence, even assuming commenters' reading is appropriate.

Importantly, the proposed regulations do not exclude consideration of the quantity of hazardous waste. Section 18980.4.1(d)(4) enumerates certain information and data that any facility using a technology, other than a mechanical recycling technology currently in use in the state, must submit to the PRO or Independent Producer. The regulations specify that this information and data must be submitted before the technology may be considered recycling. The data includes reporting on the quantity of hazardous waste and acute hazardous waste generated per calendar month for the last twelve months at the facility. The PRO or Independent Producer will as a result have data on the quantity of hazardous waste generated by the facility available to it when it justifies its conclusion that use of a particular technology does not produce significant amounts of hazardous waste.

Lastly, revision of section 18980.4.1 is unnecessary because producer responsibility plans must address impacts like those the commenter identifies. Those plans are then subject to review and comment by the public and advisory board and must be approved by CalRecycle. For example, PRC section 42051.1(j)(1)(G) already requires the PRO's plan to include a budget that fully funds all costs necessary to ensure that plan implementation avoids and minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas, and PRC section 42051.1(n) further requires the PRO to ensure its plan implementation avoids or minimizes such impacts for such communities outside the state. Moreover, as explained in section 18980.8(c)(7) and (10), producer responsibility plans must include assessment of recycling technologies' environmental justice impacts and, more generally, demonstrate that the technologies satisfy the definition of "recycling" under Public Resources Code section 42041(aa). As explained in section 18980.8(a), the producer responsibility plan must satisfy all the elements of Public Resources Code section 42051.1, including the requirement that the plan demonstrate consistency with "the goals, standards, and practices required by this chapter" (42051.1(c)(5)). Therefore, CalRecycle's review of whether producer responsibility plans satisfy the requirements of that section necessarily will address the commenter's concerns.

Commenters' objections to shifting the emphasis of the requirements from production of hazardous waste to its management, specifically as a result of section 18980.4.1(d)(1)(B), are addressed in response to comment subsection (B) below.

Subsection (B)

CalRecycle rejects this comment. The proposed regulation is consistent with the statute.

As established in response to comment subsection A) above, defining "significant amounts of hazardous waste" in relation to "a substantial risk of harm to public health, or of contamination of the environment" is a reasonable effectuation of the statute by the agency tasked with promulgating the regulations. The criteria to exclude significant amounts of hazardous waste must then logically evaluate and address the risk of harm to public health or of contamination of the environment. Public agencies' primary tool for mitigation of such risks is through imposition of appropriate requirements in permits. The proposed regulations' reliance on permit compliance therefore constitutes a reasonable approach to ensuring the statutory directive is effectuated. In other words, the handling and disposal of hazardous waste in compliance with applicable permits is a key indicator that the health and environmental risks presented by the generated hazardous waste is mitigated to below a substantial risk.

This subsection also provides that the use of a technology will not be considered to cause substantial health and environmental risks based solely on minor instances of permit violations. This provision is necessary to avoid unreasonable application of the criteria set forth in subsection (d) overall. Minor violations may not, for example, relate directly to the risks presented by hazardous waste, and, more generally, violations that do not cause actual or reasonably likely harm do not logically implicate the concerns underlying the prohibition of technologies based on the generation of hazardous waste.

CalRecycle recognizes that permitting requirements differ from jurisdiction to jurisdiction. Implementing the statute and fulfilling its mandates does not require California to dictate the level of regulatory control deemed appropriate in other jurisdictions with regard to the narrow issue of whether a non-mechanical technology may constitute recycling.

Subsection (C)

CalRecycle rejects this comment. The proposed regulation is consistent with statute.

While section 42041(aa)(5) of the PRC requires CalRecycle's regulations to address hazardous waste in the context of recycling, the Act does not define hazardous waste. The subsection incorporates the federal definition of that term for two reasons.

First, the context of the Act--namely, that it concerns waste that may ultimately be processed outside of California--militates against use of the definition in Public Resources Code Section 40141. The section lies within Division 30 of the Public Resources Code, and that division is almost exclusively concerned with

the handling of solid waste within the state. Also, that section was enacted in 1989, amended in 2008. It therefore predates the addition to Division 30 of any extended producer responsibility laws, which necessarily affect businesses that operate in other states and concern waste that may ultimately be managed outside California.

Moreover, section 40141 is expressly subject to the caveat in section 40100, which states, "[u]nless the context otherwise requires, the definitions in this article govern the construction of this division," and there is no basis to conclude that the Legislature intended section 40141 to broadly apply in a context so drastically different than any that existed in 2008. In the absence of that express statutory caveat, the definition of section 40141 would have applied in the context of the Act unless the Legislature expressly stated otherwise. But the Legislature was aware that the definition of "hazardous waste" in section 40141 does include the caveat and therefore does not necessarily apply to the Act. The Legislature's silence on whether the context of the Act requires another definition therefore does not preclude that context from doing so. Especially considering the broad mandate given to CalRecycle to adopt regulations necessary to implement and enforce this chapter, the reasonable interpretation of the Act is that applying a definition of "hazardous waste" other than the one in section 40141 is an appropriate exercise of CalRecycle's regulatory authority.

Second, under 18980.4.1(d)(4)(D), facilities must account for their generation of hazardous waste. If the California definition were to apply, that accounting would be in addition to the accounting already required under federal law (using the federal definition) and, for facilities in other states, the accounting required under those states' laws, if any. By using a definition that already applies in all states, section 18980.4.1(d) avoids California policy driving the accounting that may apply in other states, which are best suited for deciding the extent to which any definition other than the federal one should apply within their borders.

Regarding the commenters' specific assertion that the proposed regulation will "allow technologies that generate wastes that are not considered federally hazardous but that are hazardous based on the California definition to count as recycling," that concern is mitigated through the proposed regulatory provisions that require such technologies to comply with permits issued to manage the public health and environmental risk posed by the technology, regardless of whether it is determined to be federal hazardous waste. Furthermore, implementing the statute and fulfilling its mandates does not require California to dictate the level of regulatory control deemed appropriate in other jurisdictions with regard to the narrow question of whether a non-mechanical technology may constitute recycling. Also, the proposed regulations impose a uniform standard of appropriate management practices through the requirement to comply with ISO 59014:2024, discussed in greater detail below.

Subsection (D)

CalRecycle rejects this comment. Requiring a facility to operate in a manner consistent with ISO 59014:2024 is consistent with statute.

As a preliminary matter, commenters are incorrect in stating that the Initial Statement of Reasons references 42041(aa)(5)'s language regarding minimizing certain impacts as the rationale for inclusion of ISO 59014:2024 in the regulations. Rather, the ISOR references the definition of "responsible end markets" under section 42041(ad). That definition requires responsible end markets to operate in a manner "that benefits the environment and minimizes risks to public health and worker health and safety." Section 42041(ad) further authorizes the Department to "establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety." Incorporation of the requirement to operate consistently with ISO 59014:2024 helps give full effect to these statutory provisions.

The primary purpose of the proposed requirement is to establish that the use of a technology under consideration cannot be considered "recycling" unless the facility's operations are consistent with the provisions of ISO 59014:2024, which is a document that establishes principles, requirements, and guidance for the sustainable, traceable conduct of materials recovery. This requirement provides additional assurance that the use of the technology under consideration reasonably avoids risks inherent in the usage of any technology and recovers materials in a way that enables determination of the amount of materials recovered. The requirement is designed to supplement the other criteria in the section, not on its own ensure that the technology does not pose substantial risk to public health and the environment.

Subsection (E)

CalRecycle rejects this comment because the recommended changes are not necessary to the implementation or enforcement of the Act. CalRecycle appreciates the comment and agrees that there may be scenarios where reconsideration of a facility's data is advisable earlier than the five-year cycle for PRO or Independent Producer plan approval. CalRecycle also appreciates the public's interest in the submitted information. However, changes to the proposed regulations are not necessary to achieve these purposes.

The statute (PRC section 42051.2(d)(1)) limits plan validity to five years, so there necessarily will be periodic reviews of use of the technologies at issue. Also, section 18980.4.1(d)(6) requires the facility to continue to report the same information and data to the PRO or Independent Producer annually after the approval of the plan. CalRecycle has the authority to request information from the PRO and Independent Producer at any time. (See sections 18980.6.8(e); 18980.7.7(e)). Further, the PRO or Independent Producer must submit an annual report to CalRecycle that includes all information required by paragraphs (2) and (3) of subdivision (a) of section 42051.3 of the Public Resources Code. (Section 18980.9.1.) PRC 42051.3(a)(2)(D)(ii) concerns information on the "recycling

technologies and means that will be utilized to achieve recycling requirements, including demonstration that the means and technologies meet the conditions in section 42041(aa)." Consistent with this requirement, the PRO or Independent Producer will be expected to include in its annual report to CalRecycle consideration of any significant changes in the data reported by a facility pursuant to section 18980.4.1(d)(6).

The PRO and Independent Producer plans are subject to public review and comment and approved plans must be posted on the PRO or Independent Producer's website. (See sections 18980.6.1; 18980.6.3; 18980.6.4; 18980.6.7; 18980.6.7.2) The regulations also require the PRO and the Independent Producer to post annual reports on their websites. (Sections 18980.6.5(f); 18980.7.4(d).)

Further, section 18980.6.6(b) states that a PRO plan, plan amendments, annual reports, or any documents associated with these submissions, are "public documents subject to mandatory disclosure under the California Public Records Act . . . unless an exemption from such disclosure applies." (Exemptions are narrow and subject to a strict process under the same section.) The same conditions apply to Independent Producer submittals. (Section 18980.7.5 (b).) (See also section 18980.14.)

Thus, while the regulations do not explicitly require that CalRecycle obtain and make publicly available the data required by 18980.4.1(d)(4)(D) or (d)(6), the regulations ensure transparency with regard to the data and analysis supporting a justification that a technology constitutes recycling.

Subsection (F)

CalRecyle rejects this comment. The statute could have but did not categorically exclude specified chemical recycling technologies such as pyrolysis when it defined recycling in section 42040(aa). Rather, it directed CalRecycle to develop criteria to evaluate such technologies and exclude them if they produce significant amounts of hazardous waste. The criteria CalRecycle proposes in the regulations for excluding technologies that produce significant amounts of hazardous waste are consistent with statute.

The criteria recognize that recycling technologies, other than mechanical recycling technologies currently in use in the State, may have impacts on public health and the environment, as commenters assert. The criteria are designed to address those impacts and exclude technologies only if they cannot be reasonably justified as not producing significant amounts of hazardous waste. See the response to 1) above on how the criteria accomplish this directive in the statute.

Comment O-62-2

2) Recycled content and recycling rate accounting requirements should be made clearer.

In Sections 18980.3.2, 18980.3.4 and Section 18980.4, there should be clearer descriptions and specifications of what constitutes accurate accounting of both recycled content and recycling rates in order to avoid deceptive methods. Certain forms of “mass balance” accounting create misleading and inaccurate accounting of recycled content that could result in low or no recycled content in a package even when significant recycled content claims are being made.13

Under some particularly problematic methods, plastic can even be turned into fuel to generate ”recycled” content credits which are then assigned to virgin plastic and sold at a higher price point as ”recycled” plastic. This kind of creative accounting would undermine efforts to get actual recycled plastic content into products and also obscure actual recycling rates given that the weight of the inputs determines how many “recycling credits” can be generated and assigned and may not be related to the actual amount of recycled polymer that is produced from the process.

Notably, in a lawsuit filed against ExxonMobil, the California Attorney General describes mass balance accounting methods as “a false and misleading marketing scheme” used to “mislead the public into believing that products made with ‘certified circular polymers’ have significant environmental benefits or are made of plastic waste when in fact they likely contain little to no actual ‘advanced recycling' content.”14 The complaint goes onto explain how mass balance accounting methods “have been widely criticized, including by some members of the plastics industry, precisely because it is deceptive to the public.” 15

To avoid such greenwashing, which would undermine the objectives of SB 54 as well as public confidence in the recycling system, CalRecycle should specify which chain of custody models will be accepted for recycled content and recycling rate calculations to ensure that no forms of credit-based mass balance accounting are used. We suggest the following changes to the proposed regulations: Section 18980.3.2(c): “Recycling rate shall be calculated based on the weight of materials, rather than volume or number. *For material made of plastic, the calculation of the weight of materials shall be consistent with one of the following International Standards Organization (ISO) standards for chain of custody models:*
(a) ISO 22095:2020(E) 5.3.2
(b) ISO 22095:2020(E) 5.4.1
(c) ISO 22095:2020(E) 5.4.2.2.1”

Section 18980.3.4(b)(1): We suggest adding the following language at the end of this section: *The calculation of postconsumer recycled content shall be consistent with one of the following International Standards Organization (ISO) standards for chain of custody models:*
(a) ISO 22095:2020(E) 5.3.2

(b) ISO 22095:2020(E) 5.4.1
(c) ISO 22095:2020(E) 5.4.2.2.1

Section 18980.4(b)(4): We suggest that it be clearer that the intent is to use recovered plastic in the manufacturer of new plastic products in order to qualify as recycled content for the purposes of determining eligible end markets, in order to avoid loopholes that might allow for the creation of a "plastic feedstock" that is then used to produce something other than plastic products, such as fuel. We suggest the following changes to Section 18980.4(b)(4) to address these concerns: "For material made of plastic, the end market is the entity that first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin plastic material for the creation of new or reconstituted plastic products. *An entity that produces plastic feedstocks that are not ultimately used to produce plastic is not an end market.* Such end markets include, but are not limited to, entities that create pellet."

12 Taylor Uekert et al., "Technical, Economic, and Environmental Comparison of Closed-Loop Recycling
Technologies for Common Plastics," ACS Sustainable Chemistry & Engineering 11, no. 3 (January 23,
2023): 965–78, https://doi.org/10.1021/acssuschemeng.2c05497. See Table S29 in the "supporting
information" file associated with the paper, available at
https://pubs.acs.org/doi/suppl/10.1021/acssuschemeng.2c05497/suppl_file/sc2c05497_si_001.pdf. 13 Joseph Winters, "The misleading accounting behind your 'recycled' plastic," Grist (May 12, 2025),
https://grist.org/accountability/recycled-packaging-triscuit-mondelez-mass-balance-chemical-recycling/
14 California Office of the Attorney General, "Attorney General Bonta Sues ExxonMobil for Deceiving the
Public on Recyclability of Plastic Products," September 23, 2024.
https://oag.ca.gov/news/press-releases/attorney-general-bonta-sues-exxonmobil-deceiving-public-recyclability-plastic

Response to O-62-2

Comment rejected. For purposes of the alternative compliance formula authorized under Public Resources Code section 42057(a)(2)(B), section 18980.3.4(b) of the proposed regulations establishes safeguards to prevent inappropriate claims of source reduction credit. In particular, under paragraph (1), CalRecycle retains discretion to evaluate whether the formula will accurately and reliably assess the reduction in use of virgin plastic through use of postconsumer recycled content in its stead. CalRecycle rejects the suggestion that the proposed regulations should prohibit specific approaches to calculating postconsumer recycled content. Such specific restrictions are unnecessary because statute expressly authorizes use of the Association of Plastic Recyclers (APR) certification program for validation. When considering whether to approve a plan proposing any other program, CalRecycle will evaluate whether the plan

establishes how the proposed third party will provide more consistent and accurate validations than APR's program would. If the proposal fails to meet that standard, whether because the proposed third party uses "free attribution mass-balance" or otherwise, CalRecycle will not approve the proposal.

Regarding recycling rate calculations, the proposed regulations expressly require that measurement of the amount of covered material considered "recycled" exclude all material derived from material other than covered material. Prescribing application of particular standards is not necessary because CalRecycle can evaluate calculations of recycling rates on a case-by-case basis to determine whether this requirement has been met. Also, in the recycling rate context, the commenter's concerns over wrongly considering material "recycled" is only relevant when processes that have inputs, such as virgin petroleum, that are not postconsumer content and might be the chemical source for the plastic outputs. In all other cases, the "weight recycled" (the weight of the plastic output that meets the marketplace standards for being used as feedstock in lieu of virgin plastic) necessarily originated from the postconsumer plastic inputs.

No change is necessary to address the commenter's concern over greenwashing because neither SB 54 nor the proposed regulations concern whether products are labeled "recyclable." The commenter appears to mistakenly link compliance with the recycling rate requirements of Public Resources Code section 42050(c) with the concept of "recyclability" under laws prohibiting deceptive labeling. Although Public Resources Code section 42355.51 is one such law, it is only relevant to the statute implemented by the proposed regulations because it provides the standards for compliance with section 42050(b). CalRecycle determinations of compliance with 42050(b), however, do not consider how products are labeled and are not determinations of liability related to labeling practices.

Lastly, CalRecycle declines to make the recommended change in section 18980.4(b)(4) because the change is not necessary. Section 18980.4(b)(4) requires the output to be "plastic feedstock," and Public Resources Code section 42041(aa)(2) expressly prohibits most fuel production from being considered recycling, so any output sold as fuel would not be considered recycled. Moreover, the proposed change would contradict the statutory definition of "responsible end market," which states that an end market is where the "recycling and recovery of materials" occurs. It would be illogical to say that whether a particular entity has conducted recycling and recovery of materials depends on some later activity by some other entity. Whether any particular entity is an "end market" would be indefinite.

Comment O-62-3

3) Regulations should include a minimum yield threshold and provide additional specificity

The proposed draft regulations state that facilities using non-mechanical recycling technologies need to submit to the PRO a “description of the covered material to be processed and the yield of the recovered material that meets the quality standards necessary to be used for the creation of new or reconstituted products” (Section 18980.4.1(d)(4)(B)). There are two issues with this provision. First, CalRecycle has not provided any baseline threshold for yield, though it should, since processes with low yields should not be considered recycling. Second, given that plastic recycling can only result in reduced reliance on virgin plastic if it displaces virgin plastic, CalRecycle should also specify that the “new or reconstituted products” must be plastic with respect to yield calculations.

To address both of these concerns, we suggest adding the following language to section 18980.4(a)(4)(A): *The threshold recycling yield identified by a PRO or independent producer entity shall not be lower than 75%, and shall be calculated considering plastic-to-plastic recycling yield.*

15 Ibid.

Response to O-62-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. Consistent with its authority under PRC section 42041(ad), CalRecycle has established the recycling yield requirement for responsible end markets in section 18980.4(a)(4)(A). That section requires a PRO or Independent Producer to identify a threshold recycling yield in its plan for each material type and to justify such yield, including how each yield is informed by relevant data. That section further requires a responsible end market to achieve, for each recycling process that accepts covered material, an average recycling yield that meets or exceeds this threshold recycling yield. Because they are included in the producer responsibility plan, the threshold recycling yield and its justification are subject to both review and comment by the public and advisory board and review and approval by CalRecycle. The proposed language of section 18980.4(a)(4)(A) therefore provides significant opportunity for oversight, accountability, and transparency in the designation of the threshold yield while still maintaining sufficient flexibility to allow for different threshold yields as appropriate across material types. The recommended threshold yield of 75% is unnecessarily restrictive, rigid, and arbitrary, and risks being an inappropriate threshold yield—either because it is too low or too high—for particular material types. Moreover, to the extent this comment recommends allowing only for the consideration of plastic-to-plastic yield, no such change is necessary. PRC section 42041(aa) defines "recycling" for the purposes of the Act, and section 18980.3.2(b)(2) of the proposed regulations implements this provision by clarifying how the weight of covered material recycled must be calculated. Section 18980.4(a)(4)(A)(ii) of the proposed regulations provides that, for the purposes of calculating recycling

yield, the weight of covered material recycled must be determined in accordance with section 18980.3.2(b)(2). This is necessary to ensure clear, consistent, and certain guidance to regulated parties. Moreover, section 18980.4(a)(4)(A) is primarily concerned with the identification of responsible end markets, not the reduction of virgin plastic. To the extent this comment is concerned with the reduction of virgin plastic, that topic is adequately addressed elsewhere in the Act and proposed regulations, including, for instance, PRC sections 42050(b), 42053(e)(1), and 42057 and sections 18980.3.4 and 18980.9.1(d)(2) of the proposed regulations.

Comment O-62-4

4) The definition of categorically excluded materials is overly broad and narrows state law impermissibly.

We are pleased to see the addition of language to verify claims of preemption and ensure accountability, including review by the Department.

However, as written, the exemption in proposed Section 18980.2 is still overbroad. Pursuant to proposed Section 18980.2, the exemptions exclude packaging “if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration.” But federal “guidelines” cannot create preemption. Only federal law can, i.e. regulations and statutes; guidelines are not law. Therefore, guidelines should be removed from the list of relevant considerations throughout the section

Response to O-62-4

CalRecycle accepts this comment and has revised section 18980.2(a)(2) to address the commenter's concern over the term "guidelines" and the concern that the proposed regulation might have a broader effect than intended (to exclude packaging when compliance with the Act and federal laws would be impossible). See CalRecycle's responses to comments I-19-1 and I-59-2, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).[

Comment O-62-5

5) The definition of “disposal” impermissibly narrows the application of key definitions in the statute.

In the proposed regulations, the definition of disposal in Section 18980.3.5 has been changed from the previously proposed language from the March 2024 to March 2025 rulemaking process; specifically, subsection (e) from previous drafts was deleted. The deleted subsection referenced a California code section, Public Resources Code §

40192(b), that defines disposal to include “transformation.” Elsewhere in California code, Public Resources Code § 40201, “transformation” is defined, in turn, to include pyrolysis. The deleted subsection is relevant to the determination of the “recycling rate,” with the statute stating that the “recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material *disposed of, as defined in subdivision (b) of Section 40192*, and the amount of covered material recycled . . . .” (Emphasis added.) Therefore, deleting that subsection is extremely problematic. We understand the rationale that this subsection was deleted since it duplicates language already in statute. However, the proposed regulations do lay out specific considerations for identifying disposal, as in this section, and for calculating the “recycling rate.” There is no separate definition of “disposal” in the regulations as relevant to “recycling rate.” Therefore, this definition should incorporate all relevant considerations, including those relevant to recycling rate, with appropriate nuance or clarifications. This also means that, in addition to incorporating the reference to transformation and pyrolysis, CalRecycle’s definition of disposal should reflect the other aspects of disposal from the statute, such as combustion, incineration, and other factors outlines in SB 54.16 Leaving out key elements is likely to lead to confusion, errors, and noncompliance from regulated entities and undermine the requirements of the statute.

The proposed change could result in the unfortunate consequence of allowing pyrolysis and possibly other “chemical recycling” technologies to be counted as recycling and used in the determination of the recycling rate when there is inadequate oversight or guidance. This is both likely—given that the CalRecycle will likely not be looking over the PRO’s shoulder on each calculation—and contrary to the statute’s language and the intent. To clarify the requirements, and to avoid this potential mishap, the language in this subsection should be restored and given additional nuance in order to avoid duplication, as has been done with provisions (a)-(d) of proposed Section 18980.3.5, listing what constitutes disposal. It’s not clear why CalRecycle has excluded additional detail on disposal including transformation (and therefore pyrolysis), or combustion or incineration, when it has included other factors reflected in the statute, e.g. “energy generation or fuel production, except for anaerobic digestion of source separated organics.”17 Added nuance could include specific language on inclusion of pyrolysis and other “chemical recycling” technologies in the definition of disposal, and/or specifically noting which elements shall or shall not be included in the determination of the recycling rate—e.g. *disposal includes transformation for the purposes of calculating the recycling rate. Transformation includes incineration, pyrolysis, distillation, or biological conversion other than composting.* Alternatively, we recommend restoring the previous language from the March rulemaking process.

Response to O-62-5

CalRecycle rejects this comment for the reasons provided in responses to comments O-13-11 and O-9-42. Regarding the suggestion to refer to certain "chemical recycling" technologies, see CalRecycle's response to comment O-6-1. Also, the second sentence of Public Resources Code section 42041(ab)

expressly authorizes CalRecycle to adopt a methodology, via regulation, other than the one stated in that sentence.

Comment O-62-6

6) CalRecycle must provide additional guidance on how the PRO is to implement the few provisions of SB 54 that relate to toxic chemicals to give meaning to the statute's requirements.

SB 54 requires fees for PRO participants and directs that the fees be adjusted with malus fees or credits, based on various delineated factors.18 CalRecycle's proposed regulations provide detail on several of these factors, with CalRecycle explaining that "[b]y presenting a list of items, further detailed below, this subsection clearly lays out requirements related to the fee, so that a PRO and participating producers can readily understand how the PRO must assess it."19 Similar detail is required for the factors specifying malus fees and credits related to the presence of toxic heavy metals or additives in plastic that can make recycling harder or embed toxics in the recycled plastics—these factors are not addressed in the regulations. Without such detail, the PRO could choose to apply malus or credit adjustments for toxics as narrowly as even just one additive or for none at all. As others have noted, the PRO's focus is compliance at lowest cost since it is a collective of producers; it is not focused on the ultimate objectives of the law.

SB 54 states that:
(8) Certified compostable covered materials that do not contain toxic additives shall be subject to a reduced fee, as determined by the PRO.
(9) Covered material that contains toxic heavy metals, pathogens, or additives shall be subject to an increased fee.

CalRecycle must include provisions in the regulations that give greater specificity to what pathogens, heavy metals, or additives should result in credit or malus fee adjustments to give the provisions meaning. Without greater detail and clarity, these provisions of the statute could essentially be negated. While CalRecycle references chemicals listed by the Office of Environmental Health Hazard Assessment (OEHHA) pursuant to Proposition 65, that is responsive to a different factor under the statute20 and only covers certain health end points, namely cancer and reproductive/developmental toxicity. The Legislature added factors that require the consideration of toxic additives, pathogens, and heavy metals other than those regulated by OEHHA; otherwise, there would be no need for factors 8 and 9. That makes sense, given that Proposition 65 does not address other health impacts from heavy metals, pathogens, or additives, such as neurotoxicity, effects on the immune system, liver toxicity, respiratory impacts, cardiovascular impacts, or hormone disruption.

The Department of Toxic Substances Control's Candidate Chemicals List already identifies a list of potential chemicals of concern and would provide greater specificity to

these provisions.21 Other states have also identified chemicals of concern which could further inform the regulations. For instance, Washington's Toxic Pollution Law identifies different classes of chemicals, including phthalates, organohalogen flame retardants, phenolic compounds, and PCBs.22 Maine has a list of food packaging chemicals of high concern.23 NRDC proposes that the malus fee adjustments should, at a minimum, include higher fees for the chemicals of concern covered in these laws and lists. As currently drafted, the proposed regulations neglect the statute's directives for several of the factors.

16 Public Resources Code § 42041(aa)(2) (referring to "other forms of disposal" at the end of the list). 17 See Public Resources Code § 42041(aa)(2): "(2) "Recycle" or "recycling" does not include any of the
following:
(A) Combustion.
(B) Incineration.
(C) Energy generation.
(D) Fuel production, except for anaerobic digestion of source separated organic materials.
(E) Other forms of disposal."
18 Public Resources Code § 42053(e).
19 § 18980.6.7. Eco-modulated Fee and Fee Schedule (providing guidance on factors listed in Public
Resources Code § 42053(e)(4), (6), and (7).); Statement of Reasons at p. 163.

Response to O-62-6

CalRecycle rejects this comment. See the response to comment O-75-14.

Comment O-62-7

7) PRO plans should include additional information about recycling technologies.

Section 18980.8(c) should be expanded to require the PRO to include additional information regarding recycling technologies and provide references documenting the data that they provide to the greatest extent possible.

We offer the following specific recommendations about the additional information that should be required to be provided by the PRO:

- Section 18980.8(c)(3) should read "A description of the level *and type(s)* of contamination the technology is able to tolerate."
- Section 18980.8(c)(4) should read "A list of overall inputs, including *names of specific* chemicals, if applicable."
- Section 18980.8(c)(5) should read, "An account of end products, including quantities of byproducts or residuals produced by the technology, along with their disposition (i.e., further processing, landfill disposal, *hazardous waste disposal,* etc.)."

- Section 18980.8(c)(8) should read, “An evaluation of the efficiency of the technology in achieving recycling rates, *including average percentages of material retention*.” (Material retention is the quantity of recyclate obtained per weight of post-consumer material.24)

Thank you for your consideration. Please note that additional concerns are delineated in the NGO coalition letter sent by Californians Against Waste, of which we are a signatory. Please feel free to contact us to discuss any of the issues we raise above.

20 Public Resources Code § 42053(e)(4). 21 Safer Consumer Products, Candidate Chemicals, https://dtsc.ca.gov/scp/candidate-chemicals-list/. 22 RCW 70A.350.010, https://app.leg.wa.gov/RCW/default.aspx?cite=70A.350.010. 23 State of Maine, Toxic Chemicals in Food Packaging, https://www.maine.gov/dep/safechem/packaging/Listing-Criteria-for-Chemicals-in-Food-Packaging_Dec2021.pdf.

Response to O-62-7

Comment rejected. Most of the recommended changes would not have a material effect on the proposed regulations. Requiring producer responsibility plans to include a "description of the level of contamination" necessarily encompasses disclosure of the types of contamination, and a list of "chemicals" necessarily encompasses the names of those chemicals. Likewise, "hazardous waste disposal" would only be an example of the required disclosure of end products—the proposed regulation, as drafted, cannot reasonably be interpreted not to require disclosure of hazardous wastes. Regarding "average percentages of material retention," that is presented as a type of "recycling rate," confusingly suggesting some requirement that multiple "recycling rates" must be presented, not just the one described in section 18980.3.2. Moreover, there is no statutory requirement that turns on achieving a certain recycling output "per weight of postconsumer material," so it is unclear what purpose such a calculation would serve. That calculation would also be partially redundant with the conceptually similar provision in section 18980.4(a)(4)(A) concerning recycling yield. That provision requires a responsible end market to achieve the recycling yield thresholds set in a producer responsibility plan, which must set a threshold informed, if possible, by the most recent needs assessment.

O-63: National Stewardship Action Council (Heidi Sanborn)

Comment O-63-1

The National Stewardship Action Council (NSAC) is a 501(c)(4) non-profit organization comprised of governments, non-government organizations, businesses, and consumers with the vision for the United States to attain a responsible, circular economy, an economic system that designs out waste and pollution, keeps materials in use, and

regenerates natural systems. We were active participants in the SB 54 bill negotiations and want to ensure the program works as planned.

This letter is in response to the permanent regulations released on August 22, 2025. We strongly believe that **SB 54 intended to reduce the overall costs of the system and was negotiated with industry to ensure it would work for business as well.** While we recognize and appreciate the significant work CalRecycle has put into refining these rules, we remain deeply concerned that the regulations, as currently drafted, in several places, overreach statutory authority and delay progress, flatly do not follow the law as written, lack clarity, and risk undermining the carefully negotiated balance of SB 54.

To ensure the success of SB 54, in January 2023, we convened a working group with more than 200 representatives from local governments, producers, recyclers, NGOs, packaging designers, consultants, and consumers. This group has met monthly to review the statute and regulations, share perspectives, and facilitate in-depth discussions on critical sections such as local government roles, responsible end markets, covered materials, and reuse infrastructure. By fostering dialogue across sectors, we have created a platform that allows representatives to learn from one another and submit more thoughtful, robust comments. We believe CalRecycle benefits from the depth of input generated through this collaboration. If these regulations cannot be implemented as intended, industry supported SB 54 in lieu of the competing ballot measure may argue that they cannot meet the goals they themselves supported. That would have national consequences, since California's implementation is being closely watched by policymakers across the U.S.

Response to O-63-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-63-2

We strongly urge CalRecycle and the Governor's office to align the regulations with SB 54's legislative intent to create a fair, effective, and transparent producer responsibility program that supports affordability for consumers, prevents loopholes, and builds consumer trust.

Overarching Concerns:

1. Several provisions go beyond statutory authority, particularly enforcement against local governments, chemical "recycling", delaying eco-modulation, not including Over the Counter pharmaceuticals to be "covered products", not addressing the future application by other Producer Run Organizations (PRO), and the exclusion application process that was added to this draft.

2. Producers, local governments, and other impacted entities still lack a clear understanding of their obligations and how the money will flow, which jeopardizes program success.
3. Certain deadlines, especially for reuse and refill, are unrealistic given the lack of early staffing and preparation by the Producer Responsibility Organization (PRO).

Response to O-63-2

CalRecycle partially accepts and partially rejects this comment. Regarding analysis by Mark Dargay and the specific items listed as potentially qualifying for exclusion, CalRecycle rejects this comment for the reasons stated in response to comment I-33-3, which incorporates that analysis. Regarding the request that CalRecycle ensure that "packaging expertise is available on staff," no substantive response is necessary because that is not an objection or a suggested modification to the regulations. Even if the request was intended as a request to change the regulations, codifying CalRecycle hiring and staffing priorities is not an appropriate use of regulations, nor is any regulation required for CalRecycle to determine the staffing necessary for it to carry out its statutory obligations. CalRecycle rejects the commenter's suggestion to require "written justification" because section 18980.2(a)(2)(A) already required one (as revised, that requirement is now found in subparagraph (B)). Regarding "federal concurrence," that is not a reasonable requirement because the federal government is a separate sovereign and is not subject to any CalRecycle control. The federal legislature can only act by passing legislation, and CalRecycle cannot reasonably expect any federal agency to take the extraordinary step of exercising discretion over whether California law should consider packaging lawful. Regarding specific limitations on what exclusions section 18980.2(a)(2) may address, CalRecycle rejects the commenter's suggestion because Public Resources Code section 42060(b), which the proposed regulation implements, does not incorporate such limitations.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. The changes resolve, among other concerns, the commenter's concern that "exemptions could remain valid upon submission and persist indefinitely." See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-63-3

1. Article 2: Covered Material and Covered Material Categories
Section 18980.2 Categorically Excluded Materials

We are concerned that the categorical exclusion framework in Section 18980.2 is overly broad and could exempt large portions of food packaging including primary, secondary, and tertiary components, simply because they serve a food safety function under FDA or FSMA standards. As Mark Dargay, Director of Regulatory Compliance at Comprehensive Food Safety, noted in his expert comments, the current language could allow barrier films, glass jars, metal lids, tamper-evident seals, kraft board boxes, and corrugated shipping cases to all qualify for exclusion, significantly limiting the scope of SB 54. To avoid this, CalRecycle should strengthen safeguards by ensuring packaging expertise is available on staff, requiring written justification and federal concurrence for exemption claims, and setting clear timelines and limits for approvals. Without these checks, exemptions could remain valid upon submission and persist indefinitely, creating loopholes, litigation risks, and unfair cost burdens on some producers. Exclusions should be limited to safety-driven packaging that is demonstrably necessary for microbial control, structural integrity, or tamper-resistance, while keeping marketing, display, and convenience-driven packaging within the program.

Response to O-63-3

CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, O-93-9, B-47-3, and O-90-3. Regarding the specific request that CalRecycle ensure that "packaging expertise is available on staff," codifying CalRecycle hiring and staffing priorities not an appropriate use of regulations, nor is any regulation required for CalRecycle to determine the staffing necessary for it to carry out its statutory obligations. Regarding "written justification," section 18980.2(a)(2)(A) requires one. Regarding "federal concurrence," that is not a reasonable requirement because the federal government is a separate sovereign and is not subject to any CalRecycle control. The federal legislature can only act by passing legislation, and CalRecycle cannot reasonably expect any federal agency to take the extraordinary step of exercising discretion over whether California law should consider packaging lawful. Regarding specific limitations on what exclusions under section 18980.2(a)(2) may address, CalRecycle rejects the commenter's suggestion because Public Resources Code section 42060(b), which the proposed regulation implements, does not incorporate such limitations.

Comment O-63-4

Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware (a)(4)(A) “Unless the item was delivered directly to a consumer, there is at least one location for returning the item that is either: the same location where the item was obtained or delivered; or within one mile of the location where the original item was obtained and has hours of operation that encompass, at a minimum, the hours of operation of the location where the item was obtained.”

We are concerned that the current language may unintentionally exclude curbside collection of reusable packaging from qualifying as a “convenient” return option. At least three municipalities in California are actively piloting curbside collection programs for reusable packaging, which provides a highly accessible return modality for consumers. To ensure these programs are recognized under SB 54’s convenience standards,

we recommend clarifying that participation in such curbside collection programs satisfies the return requirements.

We suggest the following language be added: *"(C) In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied."* This clarification would explicitly allow municipalities to opt into reuse system participation while supporting the statute's intent to maximize consumer convenience.

Response to O-63-4

CalRecycle rejects this comment for the reasons set forth in response to comment O-84-3.

Comment O-63-5

S*ection 18980.2.2. Exclusion of Certain Types of Packaging "The good must be one that is not ingested, irreversibly used, destroyed, or expended through its ordinary use."* This language is confusing, particularly in the context of food packaging, since food is inherently consumed (i.e., expended). Without clarification, the regulation risks unintentionally excluding legitimate and necessary food packaging applications. We recommend rewriting this section to accurately reflect the functional realities of food product lifecycles while maintaining the intent of minimizing unnecessary packaging.

Response to O-63-5

Comment rejected. The quoted text uses plain language, with no terms that are ambiguous or uncommon. Also, the commenter's assertion that food packaging can be eligible for the exclusion for long-term storage packaging under Public Resources Code section 42041(e)(2)(F) is wrong. If that exclusion could apply to food goods, packaging that is discarded essentially immediately—because all of its contents could be used up quickly after purchase—could be exempt. Even for foods and other products that have infinite or extremely long shelf-lives—for example, honey, salt, distilled water, or vinegar—the exemption would be inappropriate because even those products may be, and usually are, used up well within five years.

Comment O-63-6

Section 18980.2.4 – Exemptions for Certain Covered Materials
The current regulations assign sole responsibility for submitting exclusion applications to the PRO. We are concerned this structure is both impractical and inconsistent with the intent of SB 54. A PRO is not structurally equipped to manage what could be thousands of exemption requests across diverse packaging materials, formats, and industry sectors. Placing the PRO as the sole "gatekeeper" creates an administrative bottleneck and forces it into the untenable role of arbitrator between producers, rather than a coordinator of system obligations. Evaluating exclusions, especially across the wide range of food and non-food packaging subject to FDA/FSMA regulation, requires

specialized technical expertise that PROs do not inherently possess. We recommend allowing an organization, such as an association, to be solely responsible for reviewing applications. This approach would simplify the submission process and reduce the administrative burden and costs to the PRO. It would also ensure that industry perspectives are represented in the review process and prevent undue concentration of authority in a single entity.

Response to O-63-6

Comment rejected. Because it would be impracticable for CalRecycle to evaluate all exemption requests in a reasonably timely manner without some mechanism to facilitate meritorious, non-repetitive applications, section 18980.2.4(a) requires applications to be submitted by a PRO on behalf of its participating producers or by an Independent Producer. Considering applications submitted by an organization would not provide the same benefit because there would be no assurance that the organization adequately represents producers it purports to represent. In contrast, a PRO necessarily represents a large number of producers, and producers are required to join a PRO or be Independent Producers. In effect, the PRO is authorized to fill the role the commenter suggests for associations. Moreover, nothing in the proposed regulations prevents any association from collaborating with a PRO regarding an exemption application.

Comment O-63-7

2. Article 3: Evaluations of Covered Material and Covered Material Categories
Section 18980.3.3 - Eligibility for Being Labeled "Compostable"
Consumer education is critical to the success of SB 54. The current draft regulations risk creating significant confusion by failing to clearly distinguish between compostable and recyclable packaging. Overly complex or contradictory rules will undermine consumer confidence and lead to "opt-out behavior," where individuals disengage rather than attempt to comply. The current language on items "associated with the recovery of desirable organic waste" is overly broad. As written, it appears to allow any product marketed, labeled, or sold for disposal in green bins, regardless of whether it is recoverable. We strongly recommend that CalRecycle adopt clear, consistent statewide messaging and education requirements to ensure consumers understand how to properly manage covered materials.

Response to O-63-7

Comment rejected. Section 18980.3.3 does not purport to govern what can be put in green bins. Rather, it interprets various provisions for eligibility to be labeled "compostable," and only for the purpose of implementing and enforcing SB 54. The proposed regulations, do not, for example, govern labeling practices or consumer behavior. Moreover, the language cited from section 18980.3.3(c) ("associated with the recovery of desirable organic waste") relates to Public Resources Code section 42357(g)(1)(E), which is only one of many criteria that

must be fulfilled for covered material to be considered eligible to be labeled "compostable."

Comment O-63-8

We are concerned that the current draft regulations create ambiguity regarding which materials qualify as “compostable” and how they are associated with the recovery of desirable organic waste. Notably, CalRecycle removed the definition of “desirable organic waste” that appeared in the October 2024 15-day draft regulations. This definition, previously used in AB 1201 and supported by the Biodegradable Products Institute, clarified that desirable organic waste includes food and green material accepted by composters. Its removal reduces clarity and may lead to inconsistent interpretation. We are concerned that the current draft regulations create ambiguity regarding which materials qualify as “compostable” and how they are associated with the recovery of desirable organic waste. Notably, CalRecycle removed the definition of “desirable organic waste” that appeared in the October 2024 15-day draft regulations. This definition, previously used in AB 1201 and supported by the Biodegradable Products Institute, clarified that desirable organic waste includes food and green material accepted by composters. Its removal reduces clarity and may lead to inconsistent interpretation.

Response to O-63-8

Comment rejected. In the composting context, the phrase "desirable organic waste" has a readily understood meaning, and there is no risk that it might be interpreted not to include the materials about which the commenter expresses concern (good and "green material accepted by composters"). Also, as the commenter points out, Public Resources Code section 42357(g)(1)(E) already explains that those materials ("food scraps and yard trimmings") are desirable organic waste.

Comment O-63-9

3. Article 4: Responsible End Markets

Section 18980.4 - Responsible End Market Criteria

We are concerned that the current regulations could allow the production of recycled plastic flakes to count as recycling, even if the material is stockpiled without being manufactured into new products. This approach risks creating “mountains of plastic” that are technically counted as recycled but do not actually displace virgin plastic in the market. The recent closure of rPlanet Earth in Vernon illustrates the fragility and volatility of California’s plastics recycling infrastructure.

To ensure that recycling metrics reflect meaningful environmental outcomes, we recommend that the regulations require incorporation of recycled feedstock into new manufactured products, rather than counting intermediate materials production such as flake or pellet. This would strengthen the integrity of SB 54’s end-market requirements and promote real progress toward a circular economy.

Response to O-63-9

CalRecycle rejects this comment. The proposed regulations are consistent with the relevant statutory provisions, including PRC sections 42041(aa), 42041(ad), and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. See the responses to comments O-56-10, B-9-1, and O-73-8.

Comment O-63-10

4. Article 8: Producer Responsibility Plan Requirements

Section 18980.8 Producer Responsibility Plan

We are concerned that the draft regulations do not adequately protect local jurisdictions from undue costs associated with SB 54 implementation.

Under subdivision (g), *"Pursuant to paragraph (1) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a process for determining and paying costs that will be incurred, or otherwise would be incurred, by local jurisdictions, recycling service providers, alternative collection programs, and others due to requirements of the Act. For purposes of this subdivision, costs that the PRO and Independent Producers are obligated to pay are referred to as "covered costs." The process for determining covered costs must satisfy the following criteria",* the current language indicates that jurisdictions are only notified after a determination has been made. We recommend revising this provision so that jurisdictions are notified immediately upon submission of a cost claim, not solely after the PRO issues its determination. This change would ensure transparency and allow jurisdictions sufficient time to review and prepare responses.

Subdivision (h)(4)(E*) "Unless the parties agree otherwise, arbitration and mediation fees shall be apportioned equally among the parties. Each party shall be responsible for their own attorney's fees."* specifies that arbitration and mediation fees shall be apportioned equally among the parties, with each party bearing its own attorney's fees. This approach conflicts with SB 54's statutory intent. Per PRC §42040(b)(2)(B), the Legislature intended that local jurisdictions be made financially whole for any new costs incurred under the Act. If arbitration results in a local jurisdiction prevailing, the PRO should be required to reimburse all arbitration, mediation, and legal costs. Without this protection, arbitration would be prohibitively costly for many jurisdictions, effectively denying them a fair process. San José, LA Sanitation, and other municipalities have raised this concern repeatedly during the regulatory process, yet no changes have been made to the regulations to address this fundamental concern.

Response to O-63-10

Comment rejected. The commenter appears to be referring to cost claims submitted by entities other than local jurisdictions. The commenter does not explain, however, the purpose of the local jurisdiction having "time to review and prepare responses," or even what a "response" would be. The costs at issue would not be payable to the local jurisdiction, so the logic of the comment's recommendation is unclear. Regarding transparency, see CalRecycle's response

to comment O-13-23.
Regarding section 18980.8(h)(4)(E), CalRecycle rejects this comment for the reasons stated in response to comment O-15-6 and because the commenter does not explain what it would mean for a local jurisdiction to be the "prevailing" party. As with the scenario addressed in the response to comment O-15-6 (merely requiring the amount determined via arbitration to be greater than the cost determined by the PRO), such an approach would risk manifestly unfair or unpredictable results. For example, a local jurisdiction could bring a matter to arbitration and succeed only in having the arbitrator require a small increase over the PRO's covered cost determinations. There is no clear threshold that could be established for when such an increase would be sufficient to render the local jurisdiction to have "prevailed." This problem is particularly acute where there is a wide divergence between the PRO's determination of covered costs and the amount advocated by the local jurisdiction. It is reasonable to expect that an arbitrator would determine the appropriate amount to be somewhere between those positions, leaving neither party the clearly "prevailing" one.

Comment O-63-11

5. Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions
Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers
The one-year update cycle for Covered Material Category (CMC) lists is impractical. Annual updates would require jurisdictions to revise bin labels, outreach materials, and public education campaigns on an unrealistic timeline. Language on enforcement raises additional risks, as jurisdictions could be fined if materials are not updated quickly enough, repeating challenges seen under SB 1383. Jurisdictions also face a compliance gap prior to 2027. CMC lists are already published, but jurisdictions lack dedicated funding until the PRO plans are approved. Expecting compliance before plans are in place creates an unfunded mandate. CalRecycle's clarification that municipalities may pause violations while exemption or extension requests are under review is helpful, but further protections and guidance are needed to ensure local jurisdictions are not penalized for delays outside of their control.

Response to O-63-11

CalRecycle rejects this comment. A period of one year balances the need to implement the Act, as a standard period longer than one year would delay the positive results expected from the change and would often exceed the period local jurisdictions reasonably require for updating their recycling programs, while a shorter period might be impracticable for a local jurisdiction or recycling service provider. Further, the ability to request an extension allows for added flexibility as CalRecycle may identify an effective date later than the publication date in cases where it anticipates those affected by the change may need a longer period to implement the update successfully.

The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources

Code, and the implied suggestion to specify that local jurisdictions are not subject to enforcement prior to being provided the funding required to implement their programs is not necessary to the implementation or enforcement of the Act. While section 18980.8(g) of the proposed regulations clarifies the type and scope of costs incurred by local jurisdictions due to requirements of the Act that a PRO or Independent Producer is required to pay, nothing in the Act provides that a local jurisdiction's compliance obligation under the Act is conditioned on the local jurisdiction having received adequate support and payment from a PRO. Moreover, the commenter's concerns are adequately addressed by PRC section 42060.5(b), under which a jurisdiction is entitled to an exemption if it cannot practicably comply with 42060.5(a).

Comment O-63-12

For SB 54 to succeed for Californians, the regulations must reflect the law's intent: protecting the environment while **unlocking billions in economic benefit.** If not implemented as negotiated and passed, the regulations undermine the democratic process that created the bill, leave billions in environmental and economic benefits on the table, risk unfair markets that invite litigation, and jeopardize California's leadership, putting packaging EPR programs at risk nationwide.

Thank you again for the opportunity to comment and we appreciate all the hard work you do and for your consideration of our comments.

Response to O-63-12

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-64: Gail Delihant

Comment O-64-1

Western Growers Association appreciates the opportunity to provide comments to CalRecycle on the proposed Senate Bill SB 54 (Allen, 2022) ("SB 54" or the "Act") Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations published on August 22, 2025 ("Draft" or "Draft Regulations"). Western Growers is an agricultural trade association headquartered in California. Western Growers members are small-, medium-, and large-sized businesses that produce, pack and ship fruits, vegetables, and tree nuts from our home states of California, Arizona, New Mexico, and Colorado. Western Growers members account for roughly half the annual fresh produce grown in the United States, providing consumers with healthy, nutritious food.

We appreciate CalRecycle's continued efforts to acknowledge the need for exclusion and exemption of fresh produce packaging in the latest Draft Regulations. The fresh

produce industry remains committed to delivering safe, fresh, and affordable healthy produce to consumers. The considerations outlined in the Draft will support our ongoing efforts to develop packaging solutions that not only meet federal safety standards but also align with our sustainability goals.

US Food and Drug Administration (FDA) guidance documents provide a clear, acceptable path to compliance with legally binding statutes and regulations, such as the Food Safety Modernization Act (FSMA) and other critical food safety protective measures and guidelines. These documents have been previously reviewed and deemed acceptable by the FDA to meet these underlying legal requirements. Following FDA guideline documents, in addition to adhering to the mandated rules and regulations, represents the gold standard for operational excellence. For our members, achieving this gold standard in food safety is paramount. To illustrate their necessity, consider the pharmaceutical industry. The safety of medications and medical devices relies heavily on adherence to over 2,400 FDA guidance documents.1 Their adherence is essential to maintaining a safe drug supply. Similarly, in the food sector, these FDA guidance documents are indispensable tools for ensuring the highest level of consumer protection and public health.

The FDA has a longstanding success record of developing different tools to direct and educate the regulated community. The FDA has published extensive guidelines related to food production and food safety. FDA inspections can be performed directly by the FDA or through a contracted state agency such as the California Department of Food and Agriculture (CDFA). “FSMA PSR [FDA Food Safety Modernization Act’s Produce Safety Rule] inspectors draw from these guidance documents in interpreting and enforcing the rules, and judges may give weight to the information contained in guidance documents if a farm’s practices are under question in court. Therefore, while a producer may adopt practices not articulated in guidance, they should be aware that guidance is representative of the FDA’s current thinking and presents a good starting point for FSMA compliance.”2

The Legislature included several key provisions in SB 54 that are intended to reduce the impact of the law on growers, to avoid conflicts with federal laws, regulations, and guidance that protect food safety and decrease spoilage, to reduce greenhouse gas (GHG) emissions associated with food waste, and to reduce the extent to which the Draft Regulations may make it more difficult for disadvantaged communities to afford healthy food.

The Importance of Packaging in Protecting and Preserving Fresh Produce

Packaging helps ensure that a high-quality, consistent product is delivered to the consumer year-round despite crop variety changes, handling variability, and overall product pre-harvest and post-harvest quality challenges. It protects the health and safety of consumers by reducing the potential for food contamination. It reduces the overall cost of groceries for families by keeping their produce fresh for longer and reducing food waste. Sustainable fresh produce packaging relies on the functional design and application of packaging systems to protect and preserve fruits and

vegetables while minimizing negative impacts on the environment, economy, and society throughout the supply chain. Prioritizing the functionality of fresh produce packaging is essential because it aligns sustainability efforts with the primary purpose of packaging: to protect and preserve the food it contains.3

Life Cycle Assessment (LCA) studies show that the agricultural production phase, which requires water, land, and energy to grow, process, and transport fresh produce crops, accounts for an important portion of the total environmental footprint.4 When the packaging or supply chain fails and food becomes food loss and waste, the entire environmental investment in that food is lost. There are still significant gaps in understanding how to seamlessly integrate packaging technologies throughout the supply chain that need to be addressed to minimize food waste.5 Reducing food loss and waste along the supply chain in households and the food service industry, helps California reach its ambitious GHG emissions reduction goals by contributing to a net reduction in GHG emissions from the global food system (agricultural production, handling and storage, processing and packaging, distribution, and consumption).

Plastic is an important material used in fresh produce packaging, and provides a lightweight, moisture-resistant, and customizable barrier that helps protect produce from mechanical damage, contamination, and excessive water loss, while allowing controlled gas exchange (e.g. via micro-perforations) to slow respiration and spoilage.6 Currently, there are few materials that can match the capabilities of plastic to extend shelf life by days or more compared to unpackaged or less optimized alternatives. Research for alternatives to plastic are simply not able to keep up with the regulatory landscape. For example, the bioplastic PBAT (polybutylene adipate co-terephthalate) has shown some promise over the past decade for food packaging applications. However, the list of materials considered to be compostable is a moving target7 that has posed challenges for the innovators and investors of compostable plastic packaging alternatives.8

Further assessment of the social and environmental impacts of plastic packaging alternatives such as those derived from biomass are needed. The packaging industry is just one of the many industries vying for biomass including energy, food/feed, biofuel, and materials/carbon. 9 Each plastic package alternative option should have a cost-benefit analysis (CBA) performed prior to establishing a regulation requiring it. For example, Rui et al. highlight the issues regarding precious agricultural land use changes from food production, to producing plant based (biomass) packaging material.9 Costs associated with using agricultural soil for packaging material, a non-renewable resource that has a complex ecosystem, will result in considerable environmental and economic consequences.9

In the packaged salad industry, primary packaging serves as a barrier to protect from postprocessing contamination by microorganisms, chemicals, and foreign materials, while it also offers shelf-life extension by modifying package atmospheric gas compositions, generally oxygen and CO_2 percentages, which reduces the respiration and transpiration rate of the product, while also creating an acidic environment which inhibits microbial growth and subsequently extends shelf life.10 Plastic achieves this

shelf-life extension through intentional design, providing differing packaging options with varying oxygen transmission rates (OTR).11 With reduced oxygen and increased CO2 levels, modified atmosphere packaging (MAP) can slow the senescence of the product, inhibit enzymatic activity, and disrupt the growth of aerobic microorganisms, which can lead to spoilage and food safety risks for consumers.12

Packaging Reduces the Risk of Harmful Contamination

If history has taught us anything, working together is better than alone. Risk management for food safety is undoubtedly complex. Practical solutions are necessary to address safety risks. The California Leafy Greens Marketing Agreement (CA LGMA) founded in 2007 is a great example of an industry-state partnership to address food safety risks following the E. coli 0157:H7 outbreak in 2006 that sickened 205 people and tragically caused three deaths. The CA LGMA represents an unprecedented commitment to protecting public health and requires California farmers to follow a set of food safety practices that are assessed through mandatory government audits executed by CDFA. In 2007, Western Growers, in collaboration with CA LGMA released the first set of food safety standards to manage microbiological risk in leafy green operations. Since its inception, these food safety guidelines have continued to evolve with science through an adaptive and continual improvement process. While CA LGMA is focused on best practices for safe growing and harvesting operations, food safety practices involving packaging with appropriate materials have helped ensure food safety for consumers of fresh produce over the years.

The fresh fruit and vegetable segment, whether fresh-cut or whole fruits and vegetables, has intrinsic complexity with respect to product quality, shelf-life, and food safety risks.13While fruits and vegetables are critical for human health and nutrition, they also represent a food segment associated with multiple foodborne outbreaks and consequently require focused attention to the risks associated with each produce item and packaged product.14 For fresh-cut fruit and vegetables, packaging is a critical product design component, selected to optimize the shelf life (i.e., quality) of the items and to maintain safety for the consumer.15 Packaging is a critical element in controlling potentially harmful post-processing exposures.16 In 2023, Zwilling et al. note that, “Foodborne disease caused by bacterial pathogens causes approximately 3.6 million illnesses annually and represent 64% of the foodborne pathogen-related deaths annually in the U.S., with the remaining 36% caused by viruses and parasites.”36

Additionally, packaging protects the fresh produce from contamination that can spread from other products in the store, such as pathogens from raw poultry products or raw meats that may spread from the hands of employees or customers or from surfaces of baskets and carts. Because consumers can easily see whether packaging has been tampered with, they can protect themselves from these health risks.

Packaging Extends the Shelf Life of Produce

The U.S. Department of Health and Human Services (HHS) Healthy People 2030 project identifies the importance that fruits and vegetables have on an individual’s overall health, well-being, and onset of chronic diseases (e.g., diabetes, heart disease,

cancer) and many efforts within the Draft Regulations are aimed at increasing availability and consumption amongst U.S. consumers.17 Efficient and cost effective California agricultural production is needed more now than ever. Cuts to federal funding for food including recent proposed cuts to the federal Supplemental Nutrition Assistance Program (SNAP) and California's CalFresh funding, threaten people's access to healthy nutritious foods. In the face of federal cuts, California has been steadfast in its efforts to fight food insecurity and hunger. 18 California's fresh produce farmers, shippers, and processors are some of the most dedicated key players in this effort; always looking for creative and innovative ways to get more value from a drop of water, and a ray of sunlight.

Specialized food packaging extends the shelf life of fresh produce, making fresh produce more accessible and more affordable to consumers. Packaging options are dependent on many variables including but not limited to, distance from farm to store, plant variety, availability of packaging materials, longevity of alternative packaging supply chains, market volatility, consumer volume demand, food safety regulations, and the ever-shifting concept of "sustainability". Each package we see in the store comes with a story, and some, particularly for fresh produce, is nuanced and intricate.

The packaged fresh-cut industry has made fruit and vegetable consumption accessible to consumers, resulting in increased access and better nutrition overall. Many fresh-cut fruits and vegetable items are designed to be ready-to-eat, with little to no preparation required by the consumer. Plastic packaging serves as a structural barrier to physical damage which can accelerate tissue destruction, alter respiration rates due to damaged cells, and enhance microbial growth on the damaged plant tissues (spoilage and pathogens), all conditions that lead to reductions in shelf-life.19 As the demand for fresh-cut products has increased, packaging and material science engineers have designed more complex packaging to address the shelf-life and supply chain challenges to support the rapidly growing segment.20

The tremendous health and social benefits provided by fresh produce come with tremendous challenges such as how to protect its nutrition, safety, and the environment from farm to fork. Throughout this journey, the California agricultural industry is committed to environmental stewardship. One great example is the California berry industry's Berry Sustainable Coalition, which, prior to any regulation or law for packaging, committed to 100% recycle-ready clamshell packaging by 2025, driving circularity with inclusion of post-consumer recycled content in clamshell packaging and the recovery and reuse of clamshells, and committed to foster development of compostable paper-based packaging and to research new materials that are readily recyclable and/or compostable.21

Besides product shelf-life and food safety optimization, primary plastic packaging allows manufacturers and retailers to address food tampering, cross-contamination, and bioterrorism risks.22 Fresh produce items are unique in that they continue to respire and undergo several metabolic processes post-harvest.23 These ongoing metabolic processes require a dynamic package environment designed to control microbial growth

and plant tissue degradation by managing respiration rates when stored at the proper refrigerated temperatures.24 As one example, most field greens (e.g. lettuce) are harvested and then placed into a polyethylene bag in the field right where the product is grown. The bags serve multiple critical functions: protecting food safety, protecting the product from damage in transport, and extending shelf-life. The average field-pack lettuce bag has holes designed to provide a lower respiration rate for the produce, allowing lettuce to remain fresh for longer than it could without packaging.25 This is even more important for salad mixes, which are an increasingly important source of vegetables for consumers, but that have a shorter shelf life than whole lettuce.

Packaging Helps Reduce Global GHG Emissions from the Food System

The issue of food waste is a growing concern. Food waste is the largest single material in landfills across the U.S. and is a significant contributor to global greenhouse gas emissions. California laws such as SB 1383 (Lara, 2016) support the 2015 U.S. Environmental Protection Agency (EPA) and U.S. Department of Agriculture (USDA) national level 50% food waste reduction goals set for 2030. SB 1383 requires every jurisdiction to provide organic waste collection services to all residents and businesses. Plastic packaging for fresh produce can keep millions of pounds of organic waste out of the collection bins.

The highly relevant study performed by Oregon's Department of Environmental Quality (DEQ) provides a deep dive into the role packaging plays in reducing food waste. Their study weighed the pros and cons of food packaging with respect to food waste and determined, "In short, because of the large amount of resources that go in to producing food, efforts to reduce food waste by increasing packaging can sometimes lead to significant reductions in environmental impact, even when the environmental impact of additional packaging is taken into account."26 Results from a research project undertaken in Austria from 2016 to 2020, the "Stop Waste – Save Food" project, documented in the "Food Packaging Sustainability: A Guide for Packaging Manufacturers, food processors, retailers, political institutions & NGOs", echoed similar findings as the DEQ study. This sustainability guidance document noted, "Due to its protective function, packaging often helps to reduce food waste. If this is the case, the environmental benefit of avoided waste is usually 5 to 10 times higher than the environmental cost of the packaging."27

The DEQ and Austrian studies highlight the importance of ensuring true sustainability is achieved, not just given lip service. A great example is the misconception that carton egg containers are more environmentally friendly than egg containers made of rPET, when in fact, their lifecycle generates higher GHG emissions.26 This indicates the need to assess each package and their LCA in a case-by-case approach to accurately determine its environmental and social impacts. The absolute need to determine net environmental benefit through a case-by-case approach is supported by the research performed by The Center for Sustainable Systems at the University of Michigan on LCA's for food packaging and waste based on detailed food packaging case studies.28

The EPA recently estimated that more food reaches landfills than any other material in municipal solid waste in the U.S., making up over 24 percent of municipal solid waste sent to landfills in 2018. “Wasted food contributes to a broad range of environmental impacts, including climate change, air pollutants, water scarcity, biodiversity loss, and soil and water degradation. Communities with environmental justice concerns bear the brunt of the adverse environmental, social, and economic consequences of waste management. By preventing food loss and waste where possible, environmental impacts and impacts to underserved communities can be substantially reduced.”29 Food waste accounts for about 7 percent of global GHG emissions. “Each year, food loss and waste from farm to kitchen embodies an area of agricultural land the size of California and New York combined, enough energy to power 50 million U.S. homes for a year, and emissions (excluding landfill emissions) equal to the annual CO2 emissions of 42 coal-fired power plants.”29

Packaging is a key strategy that has been shown to be effective in the fight to prevent food waste and to reduce overall GHG emissions from the food system. A 2018 study by the American Institute for Packaging and the Environment (AMERIPEN) estimated that proper use of packaging could reduce 10 to 15 percent of food waste at the store level and 20 to 25 percent of food waste at the household level.30 Moreover, food waste and packaging are not binary choices in terms of GHG emissions. By reducing food waste, packaging can play a critical role in reducing GHG emissions attributable to the food system. 31 A recent analysis of the environmental impact of food loss waste, including evaluation of environmental impacts of the entire food system, found that cutting food waste in half would cut the total GHG emissions of the food system by 8.5 percent. A large portion of this net reduction is associated with reduced food service and household food waste. Reducing food waste from food service and households also “has the potential to reduce demand for inputs from the upstream stages including agricultural production and food processing.”32

Current State of Fresh Produce Packaging

The produce industry is invested in improving packaging sustainability, including by creating more sustainable supply chains. 33 Over the last decade, the produce packaging industry has made significant strides in reducing packaging as well as reformulating packaging to lower the environmental impact of plastics used.34However, the need for specialized food packaging that is effective in protecting and preserving fresh produce, and that is accessible, not cost prohibitive, and meets all federal requirements, creates several unique challenges for growers.

In 2023 Schmid et al. stated, “In recent years, extensive research on active food packaging has aimed to provide new materials to maintain microbial food integrity beyond traditional packaging systems (Norrrahim et al., 2021). However, many active food packaging strategies are still in their infancy, demand complex functionalization and therefore can only address single steps in the food supply chain (Azevedo et al., 2022).”35 Schmid et al.’s research on the growth and survival of in fiber-based packaging materials of *E. coli, Staphylococcus aureus, Bacillus cereus* (all of which are associated with illness and death) highlights just how critical the ratio of recycled fiber to

virgin fiber is for deterring bacterial growth, with bacterial growth unfortunately favoring the higher recycled fiber content packages. 35 In addition to the need for managing pathogens associated with fresh produce harvesting and processing, Zwilling et al. point out another worrisome source for food pathogens, biodegradable packaging.36 Zwilling et al. note, “Lignocellulosic materials are widely used for food packaging due to their renewable and biodegradable nature. However, their porous and absorptive properties can lead to the uptake and retention of bacteria during food processing, transportation, and storage, which pose a potential risk for outbreaks of foodborne disease. Thus, it is of great importance to understand how bacteria proliferate and survive on lignocellulosic surfaces. The aim of this research was to compare the growth and survivability of *Salmonella Typhimurium* and *L. innocua* on bleached and unbleached paper packaging materials.”36 Their research is yet another cautionary reminder that switching a packaging material for products we consume poses complex challenges that do not exist for non-edible product packaging changes, ESPECIALLY when it comes to packaging for raw, fresh, un-processed produce.36

Almost all clamshells today contain recycled plastic. In some categories like spinach, the clamshells are made from 100 percent rPET, or recycled polyester. By contrast, food grade post-consumer resin (PCR) for flexible packaging (e.g., bags) has only become widely available in recent years. PCR now makes up about 5 to 10 percent of every polyethylene package that some packaging companies are making. Part of the constraint is that it is expensive to set up factories to manufacture PCR, and PCR itself is also more expensive than virgin plastic by a factor of two to five depending on market conditions. Blending PCR with virgin plastic reduces the cost, which is necessary to keep fresh produce affordable. This is one reason Walmart, Inc.’s national program now uses 30% PCR plastic for its over 45 million potato bags annually. Packaging manufacturers and produce companies are working together to push for expanded availability and increased affordability of PCR for flexible packaging. We are excited that the recent efforts by the Recycling Partnership, with their launch of the Film & Flexibles Recycling Coalition (CalFFLEX initiative) in 2020, aim to tackle unique challenges and could provide the needed insights for this unique and required packaging.37

Plastic materials made from non-fossil fuel alternatives (e.g., compostable materials) are not sufficiently durable to safely preserve and protect fresh produce. Going beyond their lack of practical utility, compostable materials have other basic issues that make their wide-scale adoption infeasible. First, these materials currently are significantly more expensive than transitional plastics. This makes them unaffordable for consumers, who would see a significant increase in food costs when the cost difference is passed through38. Second, scaling production to replace plastics or even gain a significant market share will take years given the lead time necessary to build manufacturing facilities – timelines far beyond those in the Draft Regulations. Third, when produced, none of these materials compost at the rate and speed of other materials placed into industrial compost facilities. According to a 2017 report by Clean Water Fund, compostable bioplastic food ware is marketed as “green”, but little is composted in practice; almost all is landfilled. Most large compost facilities turn in 30 to 40 days, and most compostable “plastics” compost in 80 to 90 days, which means most facilities will

not take them. A 2020 paper from the University of Plymouth describes significant sourcing challenges when it comes to finding appropriate non-plastic packaging options.39 Solutions for addressing plastic pollution are available but will require coordinated action internationally and across several sectors and stakeholders. A systematic review of literature about human health effects of recycling performed by researchers in the United Kingdom note the startling low number of LCA studies globally for food and drink containers. Their research points out the need for food specific LCA's to determine an accurate account of the benefits and risks associated with different packaging materials.40

Fiber options do exist for some applications, but they currently have significant limitations over plastics.

- Fiber is very porous, an attribute that is problematic as a packaging material since fresh produce is impacted by oxygen content as well as moisture. Cardboard packaging for berries, for instance, isn't suitable for shipping long distances due to the tendency of the material to collapse, thus crushing the berries. Strawberry growers have done extensive testing on this very point. Cardboard works best with local shipment. In nearly every case, some type of lamination is necessary to reduce the porous quality of fiber. Depending on the type of lamination being used, the lamination would disqualify the fiber packaging from being considered "compostable".
- Fiber packaging is much more expensive than plastics. For example, clamshell alternatives made from liner board can also be recycled but cost 2 to 2.5 times the plastic clamshell, if viable options are even available.
- Fiber tends to weigh more than plastics, which is problematic as it adds to the cost of shipping.
- From a GHG perspective, packaging material affects transportation emissions—paper, being heavier than plastic, could increase emissions if used as an alternative for certain crops.
- The environmental footprint to grow the crop used for fiber is larger than the footprint for plastic.

While the discussion on which is the right package to use continues, Oregon's DEQ poignantly stated, "While consumers may prefer to eat food as fresh as possible, we don't all live on farms, so processing and distribution of our food is a necessary reality."26

Response to O-64-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent

this comment might be read to recommend that CalRecycle perform a cost-benefit analysis before establishing any regulation requiring any plastic packaging alternative, no response is required because CalRecycle is not proposing any regulation requiring any particular plastic packaging alternative. The proposed regulations are consistent with the requirements of the Act, and no change is required for its implementation.

Comment O-64-2
Comments on Draft Regulation

Our comments below include our support and concerns for the current Draft Regulations.

Section 18980.2. Categorically Excluded Materials

We appreciate CalRecycle's efforts to align the regulation with Federal laws, regulations, and guidelines to prevent conflict between state and federal laws. We support Section 18980.2. for the purpose of maintaining the ability to comply with federal and state rules, regulations, and guidelines as they related to use of critical and required packaging for food safety. We are pleased to see CalRecycle's addition of language in this section that highlights the important role that CDFA plays in food safety and the agency's expertise in fresh food production in proposed subsection (a)(2)(B), "Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Department shall determine whether the packaging or packaging component qualifies for the exclusion."

Response to O-64-2

Comment rejected. The comment must be rejected, and no response is required, because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-64-3
Section 18980.2. Categorically Excluded Materials (a)(2)(B)

CalRecycle has proposed a very short 180-day window following its determination that packaging or a packaging component does not qualify for an exemption, after which the packaging or component is considered to be covered material. In many cases, it will not be reasonable possible for entities to satisfy the requirements of the Draft Regulations for those materials within 180 days.

The following information is provided to assist with understanding the financial and time commitments it takes the average sized company to switch their food packaging. For the purposes of this example, we will discuss primary (retail and Business to Business

(B2B)) packaging noting that changes to primary packaging require assessment and possible changes to secondary and tertiary packaging.

Package design as noted previously is multifaceted and includes but is not limited to the following: testing and measurement (which includes compliance with federal standards and ISO standards set by the International Organization for Standardization (ISO) for which there are more than 1,600 related to the food packaging sector) (41), material engineering and testing (which includes chemical, physical, environmental, barrier, and migration testing) (42), product-package interactions (typically takes the longest time in the new product development (NPD) process) (43), and distribution (which includes International Safe Transit Association (ITSA) standards, ASTM International standards such as ASTM D4169).(44)

Primary packaging (retail and B2B) redesign is a substantial undertaking due to its multifaceted, iterative, phased requirements in order to be as successful as possible. Note, we mention 'successful as possible' because there is no guarantee for success, even after a package prototype is developed and tested. Packaging redesign on the level that would be required for the packaging types that are currently unable to meet the Draft Regulations' requirements (i.e. not on the Covered Material Category list), would include both packaging material and form. All packaging redesigns require a backup alternative that offsets the inherent risks of changing packaging that includes functionality, sustainability of raw material market, sustainability of circular economy (raw material market, end market, consumer behavior, to name a few). It is safe to say that these factors double the design costs and increase the testing timeline. The overall redesign process for food safe packaging can exceed 18 months, and this does not include the time required to secure multi-year material supply, contracts with packaging manufacturers, or the time required for custom machine fabrication.

The importance of package testing, while absolutely critical for compliance with federal regulations, rules, and guidance to ensure consumer safety, plays an important role in the creation and maintenance of a solid and reliable food supply chain that fosters efficient and cost-effective sustainable business relationships. Consumers have come to expect a high level of consistency in their food supply via retailers, and retailers rely on farmers, processors, and shippers to get them fresh produce in a manner that is safe, meets or exceeds quality standards, and aligns with their business model which is largely driven by consumers. All entities in the food supply chain, from the time the farmer plants the seed in the soil, to when the lettuce makes its debut at the dinner table, must work together in concert.

Because the 180-day timeframe is insufficient for producers to adequately address these issues, we request that CalRecycle revise its proposal to provide that, at the time CalRecycle determines the packaging or packaging component does not qualify for an exclusion, CalRecycle will determine an appropriate timeframe after which the packaging or packaging component shall be considered covered material. In the interim, CalRecycle could require producers to implement good faith sustainability measures, including source reduction. This flexibility allows CalRecycle to account for differences

in complexity of the packaging and its purpose, allows for progress in the interim period, and avoids creating a compliance obligation that is not reasonably possible for producers to achieve.

41 International Organization of Standardization (ISO). 2018. “ISO and food”. Available at https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100297.pdf.

42 Preeti Singh, et al. Food Packaging Materials: Testing & Quality Assurance. London, Taylor and Francis, 2017, https://doi.org/10.1201/9781315374390.

43 Piotrowski, Norbert. “Machine Learning Approach to Packaging Compatibility Testing in the New Product Development Process.” Journal of Intelligent Manufacturing, 17 Feb. 2023, https://doi.org/10.1007/s10845-023-02090-8.

44 Jayan, Heera, et al. “Testing Methods for Packaging Materials.” Bio-Based Materials for Food Packaging, 2018, pp. 57–79, https://doi.org/10.1007/978-981-13-1909-9_3.

Response to O-64-3

Comment partially rejected and partially accepted. CalRecycle declines to make the particular change suggested. The commenter ignores producers' responsibility for complying with statute to begin with. When a producer incorrectly claims that packaging is excluded from the definition of "covered material" pursuant to 18980.2(a), that producer itself procured the resulting compliance challenges. Moreover, when a change in packaging is required for any reason, including when packaging formerly excluded becomes no longer excluded because packaging that complies with federal and state law becomes available, the statute and proposed regulations provide adequate protections against unfair penalties if complying with statute is not practicable within 180 days. Corrective action plans (addressed in section 18980.13.1) may enable affected producers to avoid penalties, as would an exemption for "unique challenges" with an accompanying phase-in plan (addressed in section 18980.2.4). Nor would the commenter's suggestion that the regulation should allow CalRecycle to "determine an appropriate timeframe" on an ad hoc basis be appropriate. In contrast with the clear procedures and standards applicable to corrective action plans and exemptions, such a rule would be vague with respect to what would be "an appropriate timeframe" and thus leave regulated entities without a clear, predictable framework for understanding and anticipating their compliance obligations. See, also, response to comment I-63-6, which also suggests a change to the 180-day period.

CalRecycle accepts this comment, however, to the extent it suggests that the proposed regulations should reduce the potential for businesses to have to change their packaging within 180 days of a Department determination. The regulation has been revised to more clearly establish a process to prevent unmeritorious claims from being added to the database described in the regulation (in new subparagraph (D)), thereby reducing the likelihood a business

will rely on such claims only to have the Department deem the claim improper and thus subject to the 180-day period.[

Comment O-64-4

Section 18980.2.3. Exemption for Specific Material with Demonstrated Recycling Rates & 18980.2.4. Exemption for Certain Types of Packaging

We appreciate the Draft Regulations' alignment with statute, as noted in both Section 18980.2.3. and 18980.2.4., in which participating producers directly apply to CalRecycle for applicable packaging exemptions pursuant to Public Resources Code section 42060(a)(3) or (4). For producers who rely on materials that cannot comply with the Act, which includes plastic packaging that is critical to ensuring the safety of fresh produce in compliance with federal laws and guidelines, the ability to obtain an exemption from the requirements of the Act is paramount.

While not an exhaustive list of federal regulations that pertain to fresh produce and its packaging, we provide a few examples to highlight the ways in which federal fresh produce packaging regulations protect the public. In general, Title 21 federal regulations include numerous risk-based preventative controls for handling, processing, and transporting fresh produce that must be legally adhered to including but not limited to "Subchapter B – Food for Human Consumption". Packaging is designed to address a multitude of concerns and needs along the entire supply chain. One example of this is the Title 21 CFR Part 110 Subpart E Section 110.93 regulation that requires transportation and storage of fresh produce be done in a manner that will, "protect food against physical, chemical, and microbial contamination as well as against deterioration."45

The material and design of fresh produce packaging plays a critical role in food safety and the FDA regulations assist with ensuring consumers are free from unnecessary risk or harm. For example, when addressing the unique elements of fungi and other fresh produce that require packaging that allows the plant material to respire, the FDA guidance "Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry" published in 2018 states, "You must package covered produce in a manner that prevents the formation of *Clostridium botulinum toxin*…"46 Switching packaging for certain produce from a "custom-designed-to-meet-the-needs-package" such as breathable film plastic to an oxygen impermeable film can create the ideal environment for *C. botulinum* to grow. Title 21 CFR Part 117 Subpart B can be referenced for further details on FDA regulated food packaging materials. Regulatory language that impairs the ability of growers to comply with the Act or that unnecessarily increases compliance costs runs contrary to the state's public policy goals, including improving access to safe and affordable food.47

It is important to note that the cost of redesigning a package material and form48 further adds to SB 54 compliance costs and, as a result, increases consumer food costs. These costs are in addition to the average compliance costs that CalRecycle's June 2025 Standardized Regulatory Impact Assessment (SRIA) estimates producers will

each pay on average: $457,114.00 US dollars annually.49 Our members take great pride in their work and the benefits that they bring to people by way of healthy affordable fresh food. Sadly, California farmers have only experienced increasing regulatory costs (highest in the nation), with an astonishing 1,366% increase since 2006.50 Many California specialty crop commodities are operating on thin or negative profit margins.51 For some California farmers, these additional SB 54 regulatory costs will be the proverbial straw.

45 United States Food and Drug Administration (FDA). 1986, last amended 2025. 21 CFR Part 110 Subpart E -- Production and Process Controls. Available at https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-110/subpart-E.

Response to O-64-4

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-64-5

Section 18980.2.3. Exemption for Specific Material with Demonstrated Recycling Rates, 18980.2.4. Exemption for Certain Types of Packaging, and Section 18980.13. Compliance Evaluation and Determination

The regulations should clearly provide that penalty accrual is stayed while CalRecycle considers an application for an exemption under Public Resources Code Section 42060(a)(3) and (4). SB 54 acknowledges that, for some covered material, compliance with the Act's requirements will be uniquely challenging or impossible, and those materials should be exempt from the requirements of the Act. (Pub. Res. Code, § 42060(a)(3), (4).) For these covered materials, it is impossible for a producer of a product using that covered material to comply with SB 54, and the Legislature did not require this impossibility.

The Draft's proposed exemption application process conflicts with and undermines the purpose of Public Resources Code section 42060(a)(3) and (4) by providing for an application review period of indeterminate length that begins after the effective date of the Act and the regulations. It proposes for an exemption to be valid "upon approval," which leaves a period of time before it is valid where the producer applicant, who cannot comply with the Act's requirements,52 is still subject to them. It takes the ability to avoid penalties out of the hands of the producer. Penalties of up to $50,000 per day could accrue for however long CalRecycle spends evaluating the application.53 (Pub. Res. Code, § 42081.) In just a month, penalties could balloon to $1,500,000.

This result is incompatible with the language, purpose, and intent of the statutory exemptions. To remedy this problem, the proposed Section 19890.2.4 must clearly state that, while an application for an exemption pursuant to Public Resources Code section 42060(a)(3) or (4) is under review: (1) accrual of penalties related to the producer's use of the covered material is stayed, and (2) upon approval, the exemption is deemed effective as of the date of the application. CalRecycle has already proposed to provide a

stay on penalty accrual for recycling service providers in the draft Article 13 Section 18980.13(j).54 We urge CalRecycle to extend this accommodation to producers applying for an exemption or categorical exclusion pursuant to Public Resources Code section 42060(a)(3) or (4).

46 FDA. 2018. Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry. Available at https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-112.

47 See California Department of Public Health, Center for Family Health, Hunger, Nutrition, and Health. Available at https://www.cdph.ca.gov/Programs/CFH/Pages/Hunger,-Nutrition,-and-Health.aspx.

48 Package redesign costs depend on a variety of factors including raw material accessibility and market demand, intended functionality, geographic location of product operation (e.g., farm or processing facility), location of packaging manufacturer, number of intermediary companies in the supply chain, shelf life of the package (e.g., materials age, susceptibility to storage conditions including temperature and moisture can negatively impact structural integrity, microbial growth prevention), and consumer preference just to name a few.

49 CalRecycle, Proposed Regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act, Standardized Regulatory Impact Assessment (SRIA) (Jun. 2025), p. 38 [estimating annual compliance costs for producers of covered materials that have gross annual sales of products that use covered material within California greater than $1 million].

50 Hamilton, L., et al. Two Decades of Change: Evolving Costs of Regulatory Compliance in the Produce Industry. 2025, available at https://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1164&context=agb_fac.

51 UC Davis Cost and Return website available at https://coststudies.ucdavis.edu/current.

Response to O-64-5

Comment rejected. The commenter mistakenly asserts that the statute requires CalRecycle to grant an exemption when compliance would be impossible. That interpretation is nonsensical: Compliance with the law would become merely optional because, instead of complying, producers could intentionally procure the inability to comply. Absurdly, covered material that is impossible to recycle or compost would necessarily be exempt from the requirement to be recyclable or compostable. More sensibly, statute only states that CalRecycle "may exempt," not that it "must" exempt, materials identified as presenting "unique challenges" or that cannot comply for health and safety reasons.

CalRecycle also rejects the suggested change because it would enable any

producer to avoid penalties altogether by serially submitting exemption requests, and statute provides ample safeguards against unfair imposition of penalties. For one, penalties do not accrue until thirty days after CalRecycle issues a notice of violation. For another, PRC section 42081(b) allows CalRecycle to consider a corrective action plan, under which the non-compliant producer would avoid penalties altogether. Also, the penalty amounts cited in the comment are the maximum penalties; they do not indicate that CalRecycle must impose any penalties, much less penalties of any particular amount. Rather, the factors listed in PRC section 42081(c) require CalRecycle to consider a wide range of circumstances when determining an appropriate amount of penalties. A good faith effort to secure a statutory exemption, based on a plausible application of the law, in a timely manner would be relevant to multiple, if not most, of those factors.

Comment O-64-6

Section 18980.5. Producer Compliance

We strongly recommend greater flexibility for first-time producers registering with the Producer Responsibility Organization (PRO) than what is required in subsection (a) and (d) of Section 1890.5. The complexity of this regulation may leave certain entities unsure of their status as "producers" under the Act, insufficient time to comply. A 30-day registration mandate following the Draft Regulations' publication is too short for entities to fully grasp how these new requirements affect their specific operations. This compressed timeline risks leading to the submission of unnecessary and potentially inaccurate data to both the PRO and CalRecycle, creating an undue burden. This concern is amplified by the fact that the requirement involves submitting sensitive data from private companies to the PRO, which is a non-governmental entity.

CalRecycle, as they have done with other CalRecycle EPR programs, should provide additional resources and technical assistance for California businesses to determine whether they must comply with the SB 54 regulations. The PRO should have greater flexibility to set an onboarding schedule for new producers that work for both parties, thereby ensuring the submitted data is accurate.

Additionally, mandating complete 2023 data may be problematic for many producers. The proposed regulation requires a level of detail that may exceed the comprehensive record-keeping practices maintained by many producers in 2023. Existing systems were not designed to track data for this regulatory purpose. In addition, producers may not have retained these older records under their ordinary document retention schedules. While producers are fully committed to meeting these requirements, to maximize participation in the registration process and ensure a more realistic, workable solution for producers, we recommend requiring producers to submit the 2023 data they have available in good faith, acknowledging that this data may be incomplete or may not exist. Inclusion of the "good faith" efforts requirement in the regulation for the initial reporting cycle is necessary to formally acknowledge the inherent challenges.

Western Growers is concerned about the potential for confusion or disagreement between producers, the PRO, and/or CalRecycle regarding the scope of data producers must provide to the PRO, particularly historic data, and the PRO's obligation to provide data to CalRecycle without modification. To clarify these obligations, we ask that CalRecycle include language in the proposed regulation to clarify that: (1) with the exception of the 2023 data needed for CalRecycle's determination of the baseline, producers are not required to provide the PRO with any other historic data; and (2) the PRO is required to provide CalRecycle with the 2023 data it received from the producers, without modification, for CalRecycle's use in deriving the 2023 baseline.

Western Growers also asks that CalRecycle revise its proposed Section 18980.5(d) to require that a producer submit to the PRO, at the time it applies to become a participant of the PRO, the producer's supply data for the prior calendar year. The current proposal to require producers to provide 2023 data is addressed elsewhere in section 18980.5, and its duplication in subsection (d) is not required by and is not consistent with the Act. Public Resources Code section 42057(c)-(e) requires producers to provide the PRO with specified data, including supply data, necessary for the PRO to meet its reporting requirements, including for annual reporting. Where the Legislature intended to require producers to provide data for a specific year, it clearly stated this intent in the statutory language. Notably, nothing in these sections requires producers to provide supply data from 2023 or any past year. Instead, these sections appear to be requesting data for comparison *against* a 2023 baseline, which indicates that the Legislature intended to require new participant producers to provide their current supply data to the PRO.

52 CalRecycle's approval of the exemption application is clear proof that a producer of a product that uses the exempt covered material is not able to comply with the Act's requirements related to that exempt covered material.

53 The Draft Regulation proposes for the exemption application review and decision making to be performed by the PRO. For the reasons explained above, CalRecycle's proposed delegation of its agency decision making authority to the PRO is not permitted by the Act and would violate producers' Constitutional rights to petition the government for redress and to due process.

54 Proposed section 18980.13(j) provides: "No penalty may be imposed against a recycling service provider during the pendency of a request for an extension for, or exemption from, a requirement of subdivision (a) of section 42060.5 asserting that compliance with the requirement is not practicable for a specific identified covered material."

Response to O-64-6

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1, as well as to the extent the latter portion of the commenter's submission concerns proposed changes or objections already addressed in response to other portions of the submission, and further does not request any specific

changes to these referenced regulatory sections, no further response is necessary here.

Comment O-64-7

Section 18980.6.7. Eco-Modulated Fee and Fee Schedule

Guidelines are needed to ensure individual participating producer fees are based on requirements applicable to that producer. Public Resources Code section 42053(b) requires the PRO to determine a fee schedule for "each producer" during the first two years of operation and during preparation of the plan developed pursuant to section 42051.1. These producer-specific fee schedules must be "based on estimated costs of implementing the plan, operating costs, the costs of completing the needs assessment, the costs to cover environmental mitigation requirements of Section 42064, and the costs to reimburse the Department." In the third year and thereafter, the annual fee that applies to each producer must also be individualized and based, in part, on the costs to ensure each covered material meets the requirements of the Act.

While Section 18980.6.7. in the Draft does list out some individual factors the PRO must consider when setting a fee base rate for a particular covered product, several important considerations are missing from the list. For example, the Draft Regulations do not require the PRO to consider whether CalRecycle has exempted the covered product from the requirements of the Act. A PRO and CalRecycle have fewer obligations with respect to exempt material, which should be taken into account to reduce the base rate for those products. The regulations also do not require CalRecycle to consider the statutory provisions that eliminate compliance obligations for certain covered products, such as the statutory prohibition on requiring post-consumer content in food packaging. The PRO should be required to consider the fact that there are fewer compliance obligations with respect to food packaging to set a lower base rate for those products.

Finally, Section 18980.6.7.(i) in the Draft Regulations must be amended to make clear to the PRO that exempt material is not subject to malus fees. (See Pub. Res. Code, §§ 42041(o), 42053(e).) Nothing in the Act permits a malus fee to be assessed on exempt covered material, even if that material contains a chemical on Proposition 65 list.

Response to O-64-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule, including fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e). Sections 18980.6.7(b), (e), and (f) of the proposed regulations implement these requirements by clarifying the individual assessments that will be charged under PRC section 42053(c)(1) and the eco-modulation adjustments under PRC section 42053(c)(2). To the extent this comment recommends including additional considerations, such as exemptions and specific compliance

obligations, to the calculation of the base fee rate under section 18980.6.7(e), no change is necessary. PRC section 42053(d) already provides that individual assessments must reflect the costs to ensure that covered materials meet the requirements of the Act, which would necessarily include costs associated with exemptions and fewer compliance obligations. Moreover, to the extent this comment recommends clarifying that exempt material is not subject to malus fees, no change is necessary. Nothing in the Act precludes exempted covered materials from being subject to malus fees. Rather, under PRC section 42053(e), the PRO must adjust producer fees using malus fees or credits when the specified conditions are met, and the PRO retains discretion as to the appropriate amount of adjustments. Section 18980.6.7(f) implements PRC section 42053(e) and reserves the appropriate level of discretion over eco-modulated fees to the PRO. Therefore, no change to the proposed regulations is necessary.

Comment O-64-8
18980.13.2. Administrative Civil Penalties (a)

The Act allows a producer to comply with its obligations under the Act and CalRecycle's implementing regulations by either (1) participating in the PRO's plan, or (2) individually, without participating in the PRO's plan, if the producer can demonstrate to the Department that it meets specified criteria. (Pub. Res. Code, § 42051.) Producers that elect to comply with SB 54 regulations by participating in a PRO's plan, and that are complying with their individual obligations under the Act and the implementing regulations (i.e., that are not the cause of the PRO's noncompliance), are reasonably relying on the PRO to comply as required by Public Resources Code sections 42051 and 42051.1. The PRO's violations are beyond the control of the participating producers. Imposing penalties on participating producers under these circumstances does not protect public health and safety or the environment because the participating producers have no control over any mitigating actions. Only the PRO has the ability to timely and voluntarily report the violation to CalRecycle, to correct the violation or conditions giving rise to the violation, and to prevent it from recurring. The Act requires CalRecycle to consider these factors when determining whether to assess a penalty under Section 42051. (See Pub. Res. Code § 42051(c).)

CalRecycle's proposal to impose penalties on participating producers for the conduct of the PRO, when the producer is individually in compliance with all legal requirements, conflicts with the letter and spirit of the Act. Imposing penalties on parties that have no reasonable ability to avoid the violation or to mitigate its effects is inconsistent with the minimum penalty factors established by the Legislature in Section 42051(c). It creates an incentive for individual producers to choose to separately comply with the SB 54 Act, without participating in a PRO, in order to have control over their own compliance and avoid penalties, which undermines the purpose of the legislation's PRO structure and increases compliance burdens for producers and for CalRecycle. And critically, it is inconsistent with the Act's prohibition on the PRO's use of funds it collects from participating producers to pay administrative penalties assessed against it. (Pub. Res.

Code, § 42051.1(j)(2).) By requiring the PRO to satisfy any administrative penalties imposed against it for its noncompliance, SB 54 incentives the PRO to comply with the law, regulations, and its plan. CalRecycle's proposal gives CalRecycle discretion to shift the financial responsibility for the PRO's noncompliance away from the PRO to individual participating producers, directly conflicting with the SB 54 Act's requirement that the PRO, and the PRO alone, bear responsibility to pay administrative penalties resulting from its noncompliance. Modifying the Legislature's allocation of responsibility for SB 54 noncompliance is outside the scope of CalRecycle's regulatory authority granted by SB 54. Accordingly, CalRecycle must revise this proposed regulation to eliminate the conflicting language.

In closing, Western Growers supports the state's goal of reducing environmental harm and human health impacts associated with plastic pollution and we look forward to continuing to collaborate with CalRecycle on this goal. Thoughtful and careful implementation of the statutory requirements in the SB 54 Draft Regulations is critical to advance the policy goals of the law in a cost-effective way. Thank you for your time and consideration of our concerns. We look forward to further engaging with you on this issue.

Response to O-64-8

CalRecycle rejects this comment. See the response to comment I-60-4.

O-65: Household & Commercial Products Association (Molly Blessing)

Comment O-65-1

The Household & Commercial Products Association (HCPA) 1 appreciates the opportunity to provide input on the implementation of California Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act of 2022, 2 and draft revised regulations. We thank the California Department of Resources Recycling and Recovery (CalRecycle) for being so thoughtful in collecting stakeholder input and look forward to We look forward to continuing to work with the Department on the successful implementation of SB 54.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into California or otherwise have a presence in the state and are

committed to ensuring that Californians have access to high-quality products with reduced environmental impacts.

1 The HCPA is the premier trade association representing companies that manufacture and sell $180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.
2 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54 1

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellant, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

Support for Revised Regulations
HCPA appreciates the significant effort CalRecycle put into revising the draft regulations, incentivizing all stakeholders to work towards the ambitious goals of SB 54 while being less prescriptive on how they must do so to minimize undue economic burden. These changes, which will increase efficiency and thus lower the cost burden on consumers, are critical to the success of SB 54 and California's transition to a more circular economy. HCPA supports the changes made, in particular to the following items.

Response to O-65-1

CalRecycle appreciates the commenter's support for the proposed regulations. Nevertheless, the comment must be rejected and no response is required because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-65-2

Reuse and Refill– 18980.1(a)(27), 18980.2.1(a)(4)-(5)

HCPA thanks CalRecycle for making numerous updates to recognize the diverse forms of reuse and refill approaches in use today and the importance of supporting consumer participation in these systems. Given the breadth of scope of SB 54, there will not be a one-size-fits-all approach to defining what constitutes meaningful reuse of a given packaging type. Producers, with extensive experience safely managing and clearly labeling their products, should have flexibility in developing and labeling a reusable or

refillable product to incorporate science-based impact assessments and consumer insights.

Response to O-65-2

Comment rejected. No substantive response to this comment is required because it does not recommend any change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-65-3

Evaluations of Covered Material and Covered Material Categories: Recyclability – 18980.3

HCPA appreciates CalRecycle creating a clearer tie between SB 54, which determines what is collected and recycled within the state, and SB 343, which determines what products sold in the state can be labeled as recyclable. We continue to believe that clarifying the interaction between these two laws is extremely important to support clear communication to all stakeholders about what is and is not recyclable in California.

Response to O-65-3

Comment rejected. The comment offers praise of the proposed regulations but does not suggest changes to them or raise objections related to the rulemaking process.

Comment O-65-4

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

HCPA would like to reiterate our support for the Department recognizing materials that are trending towards being recyclable to support the increased collection, sortation, processing, and labeling of these materials for recycling. If there is no opportunity for materials that are improving to be recognized for that improvement and communicate about the positive trend, 2 consumers will not know they can recycle the material, making it unlikely the upwards trend will continue. It is key for the Department to support materials in their journey towards meeting the robust recyclability requirements of SB 54.

Response to O-65-4

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-65-5

Producer Responsibility Organization Plan – 18980.8

HCPA thanks CalRecycle for making several updates to allow the Producer Responsibility Organization (PRO) greater flexibility in how to design the program plan and future amendments. It is important that the PRO has the flexibility to structure the program to incentivize municipalities, recycling service providers, and other stakeholders to participate in efforts to achieve SB 54's ambitious goals, not just producers. These updates will help the PRO establish a better understanding by all stakeholders, incentivize collaboration, and ultimately achieve effective implementation.

Response to O-65-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-65-6

Minimum Duration of Approved Exemptions – 18980.2.4(g), 18980.5.2(b)

HCPA thanks CalRecycle for making updates throughout section 18980.2.4 to change the minimum duration of an approved exemption from one to two years. This provides greater certainty for producers and decreases the time and cost associated with filing detailed applications with CalRecycle. Packaging changes can take several years to fully implement considering the challenges of sourcing raw materials, conducting appropriate testing, and ensuring consumer acceptance. Allowing for a minimum of two years between exemption applications gives producers the necessary certainty to keep products on the market as they work through what is feasible for packaging changes.

Response to O-65-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-65-7

Recycling Technologies and Responsible End Markets – 18980.3.6, 18980.4.1

HCPA thanks CalRecycle for removing section 18980.3.6, which incorrectly characterized certain recycling technologies as hazardous waste management instead of manufacturing and put in place prohibitive barriers for these technologies to be accepted and utilized. HCPA agrees that it is more appropriate to assess all recycling technologies by the same responsible end market standard as described in section 18980.4.1. HCPA appreciates CalRecycle allowing for a technology-neutral approach which will enable the use of any recycling method that can meet strict safety and environmental requirements.

Response to O-65-7

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-65-8

Source Reduction Baseline (18980.3.4, 18980.8.3, 18980.9.1), Detachable Components and Source Reduction Component Reporting (18980.1(a)(4),

HCPA provided comments on the above items as part of a separate producer trades coalition letter submitted by HCPA on October 7 and directs the Department's attention to that letter.

Response to O-65-8

Comment rejected. This comment merely refers to comments that the commenter submitted jointly with other commenters in another submission. No response is necessary here.

Comment O-65-9

Exclusions of Certain Types of Packaging: De Minimis – 18980.2.2(b)

HCPA would like to highlight specific concerns about the lack of clarity on what is considered "de minimis," considering that producer reporting for source reduction will be required this year and producer reporting for EPR implementation will be required less than a year from now. Without an understanding of what does not need to be reported, producers will likely report inaccurately (from being unable to collect supplier information on minor plastic components) and more than is necessary (inflating the source reduction baseline). This also puts a significant burden on businesses to collect detailed information from packaging suppliers, some of which suppliers may consider confidential business information and not agree to share, that could in the end be deemed unnecessary if the components are identified as de minimis.

For example, the source reduction guidance issued by CalRecycle on September 2 appears to consider adhesives as a "plastic component" that needs to be reported– thus bringing even corrugated cardboard into the spectrum of items that are subject to source reduction requirements. Brand owners do not have data on the amount of glue present in each size of box used and there are not other options widely available for the construction of corrugated cardboard (particularly for shipping larger or heavier items), which is one of the most recyclable materials in commerce today. Circular Action Alliance (CAA), the producer responsibility organization (PRO) for California's program, has proposed *polymer adhesive on paper packaging applications and polymer tape and paper tape with polymer adhesive on corrugated cardboard boxes*, among other items, as packaging elements that should be considered de minimis and not categorized as plastic components. Yet, despite not having information and these components likely being considered de minimis, at this time, producers appear to still be expected to report on adhesive weight as part of the source reduction baseline.

The lack of clarity creates the potential for a bottleneck and high levels of confusion inconsistent producer reporting and case-by-case producer submissions unless the agency is prepared to clearly give the PRO authority to independently make de minimis determinations.

Response to O-65-9

CalRecycle rejects this comment for the reasons provided in response to comment I-62-7. The commenter's proposal rests on the false premise that all items that may be identified as having de minimis weight or volume at some point in the future should be considered as such currently. Moreover, to the extent reporting on items likely to be considered "de minimis" is not provided, and such omission constitutes a violation of a producer's obligations, corrective action plans may be available to address such failures without imposition of penalties.

Comment O-65-10

Eco-Modulated Fees and Proposition 65 Malus – 18980.6.7(i)

HCPA remains concerned that, in section 18980.6.7(i), the draft revised regulations require the PRO to assign a malus fee to producers based on the presence of chemicals listed on California Proposition 65 (the list established pursuant to 25249.8 of the Health and Safety Code). Proposition 65 is an exposure-based statute and establishes “safe harbor” levels, which determine acceptable exposure limits for chemicals without significant health risks over a lifetime of exposure (No Significant Risk Levels and Maximum Allowable Dose Levels). Key oversight mechanisms in Proposition 65 – such as warning requirements and enforcement– are activated by exposure risk, not the mere presence of listed chemicals. As written, the draft revised SB 54 regulations are not in alignment with the Proposition 65 statute, regulations, and guidance provided by the California Office of Environmental Health Hazard Assessment 4 (OEHHA). This creates a fundamental inconsistency between the two agencies and disregards the work OEHHA has done to establish meaningful risk-based “safe harbor” limits.

Almost all packaging – including inks, labels, and adhesives – can potentially contain Proposition 65-listed chemicals even if they are not intentionally added. Given the length of the Proposition 65 list and the risk of trace contamination, especially when incorporating postconsumer recycled (PCR) content, it will be nearly impossible for companies to certify that their packaging contains none of these chemicals. Additionally, the proposed approach by CalRecycle of flagging any listed chemical present ignores the framework established by OEHHA, which calculates exposure levels and sets safe harbor levels. The draft revised regulations unfairly penalize producers for the presence of chemicals deemed in California to pose no significant risk at defined exposure levels.

For example, titanium dioxide (TiO_2) is commonly used in plastic packaging, particularly for flexible and rigid packaging materials. It is used to enhance opacity, brightness, and durability, as well as to improve UV resistance and prevent discoloration. TiO_2 is also a Proposition 65 material for inhalation toxicity. However, in plastic packaging, TiO_2 is bound up in the resin matrix and does not present an inhalation exposure risk. So, for this example, it is critical that one considers the exposure Safe Harbor levels when deciding whether a malus fee is appropriate.

HCPA strongly recommends the following change to section 18980.6.7(i) to ensure consistency with the exposure-based requirements of Proposition 65:
"(i) Pursuant to paragraph (4) of subdivision (e) of section 42053(e)(4) of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code at levels that would expose consumers above the respective exposure levels (No Significant Risk Levels/Maximum Allowable Dose Levels) and via the route of exposure of concern established by the Office of Environmental Health Hazard Assessment."

Response to O-65-10

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-65-11

Conclusion

HCPA thanks CalRecycle for the opportunity to provide input on CalRecycle's revised regulations for implementation of SB 54. We appreciate the care that CalRecycle is taking to solicit stakeholder input on developing rulemaking concepts. HCPA looks forward to continuing to engage with CalRecycle to support the success of SB 54 implementation. We invite any questions about this submission and look forward to CalRecycle's response.

Response to O-65-11

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-66: Association of California Goodwills (Nicole Suydam)

Comment O-66-1

On behalf of the Association of California Goodwills, a nonprofit organization representing 13 Goodwill organizations across the state, I want to express our appreciation for California's leadership in developing a circular economy and reducing plastic waste through SB 54. We share the state's environmental goals and are deeply committed to prioritizing reuse, reducing waste, and promoting sustainable practices in our operations.

However, as nonprofit organizations with both brick and mortar and e-commerce secondhand retail operations, we face unique financial and operational constraints that make full compliance with the proposed SB 54 regulations particularly challenging. We rely on mailer packaging to meet shipping standards as well as keep goods safe and suitable for reuse when shipping goods purchased through e-commerce platforms. Unlike for-profit producers, nonprofits often rely on donations, grants, and mission-

driven retail or programmatic revenue that are already tightly allocated toward serving our communities.

Implementing the administrative, reporting, and packaging redesign requirements outlined in SB 54 would impose significant costs and staff burdens that could divert critical resources away from our social impact programs. While we support the law's intent, we respectfully request that CalRecycle consider a full exemption for nonprofit organizations—especially those that:
• Operate on limited budgets and reinvest revenues into charitable programs;
Already prioritize sustainability through reuse, recycling, and responsible sourcing;
• Are not primary producers, only utilizing packaging to meet shipping standards on resold donated goods as a means to recirculate materials for reuse;
• Do not introduce packaging into commerce under their own brand; and
• Have minimal influence on large-scale packaging design, labeling or production decisions.

Importantly, other states that have enacted Extended Producer Responsibility (EPR) laws have recognized these same challenges and provided specific carve-outs or broad exemptions for nonprofit entities that serve the public good. We urge CalRecycle to consider a similar approach in its implementation of SB 54 to ensure that California's regulatory framework remains both equitable and effective. Such flexibility would allow nonprofits like ours to continue contributing to California's environmental objectives without compromising our ability to deliver essential community services and focus on promoting the reuse and diversion of millions of pounds of donated materials.

We welcome the opportunity to collaborate with CalRecycle and other stakeholders to identify practical approaches that balance environmental responsibility with nonprofit capacity.

Thank you for considering this request and for your ongoing commitment to inclusive, effective environmental policy.

Sincerely,
Nicole Suydam
Chairperson
Association of California Goodwills
nicoles@ocgoodwill.org

Response to O-66-1

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for non-profit packaging. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other

special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, no changes to the proposed regulations are necessary as CalRecycle does not have authority to create the exemption requested, and the proposed regulations already address the commenters concerns to the extent allowed by statute. See also responses to comment O-52-1 and O-61-3.

O-67: Flexible Film Recycling Alliance (Kurt Kurzawa)

Comment O-67-1

The **Film Recycling Peer Collaborative** is a voluntary coalition of nonprofit organizations and associations representing stakeholders across the plastic film and recycling value chain. Our shared mission is to collaborate, align, and accelerate solutions that expand f ilm and flexible packaging recycling across the United States and within California. We commend CalRecycle for its continued leadership in advancing packaging recyclability and for recognizing the unique opportunities within SB 54 to strengthen the circular economy for flexible films and packaging. The Film Recycling Peer Collaborative and its members stand ready to partner with CalRecycle and other stakeholders to ensure the successful implementation of this landmark legislation.

Finalization and Ongoing Review of Regulations

We encourage CalRecycle to finalize the draft regulations as written, enabling the Producer Responsibility Organization (PRO) to proceed with its mandated responsibilities on schedule. Given the current delay in finalizing the regulations and thereby condensing the timeframe to achieve the stated rates and dates outlined in SB54, we recommend that CalRecycle receive a targeted review within the first year of implementation to address real-world learnings, updated scientific-based data reports, and stakeholder input. If CalRecycle chooses to modify the current draft or reopens the final regulations, we respectfully offer the following considerations to ensure that the state achieves its objectives while maintaining flexibility and alignment with evolving collection infrastructure.

Flexible Films and Packaging: A Growing Opportunity

Flexible films and packaging are a relatively new packaging format, first introduced for commercial use in the 1960s. As a result, collection and processing systems for these materials are still maturing. Over the past two decades, industry-led store drop-off programs have proven the most effective and economic means of collecting flexible packaging, allowing consumers to return polyethylene (PE) films and bags to participating retail locations and community drop-off centers. Today, the United States collects approximately eleven times more flexible material through **Alternative Collection Systems (ACS)** such as store drop-off and business to business (B2B) collection than through traditional curbside or jurisdictional programs. At the same time, industry is investing heavily in research, pilot programs, and equipment installation to

support a scalable transition toward curbside collection—expanding consumer access and participation while ensuring material quality. Until infrastructure, technology, and consumer behavior evolve to support curbside programs at scale, it is critical that California continue to recognize and strengthen all existing forms of collection. Maintaining multiple, complementary pathways will ensure continuity of access for consumers, preserve proven recycling streams, and provide the f lexibility needed for long-term system success.

Support for CalRecycle's Multi-Pathway Approach

We appreciate that the most recent SB 54 draft regulations acknowledge the importance of multiple collection pathways **(ACS).** This balanced, pragmatic approach is essential, particularly in the early years of SB 54 implementation, to increase participation, maintain material quality, and ensure continued investment in flexible film recycling infrastructure. Leveraging all available systems, both alternative and jurisdictional will help California meet its ambitious recycling goals while preserving momentum toward a truly circular economy for flexible packaging.

Recommendations for Alignment and Continuous Improvement

While SB 54 appropriately recognizes both **alternative** and **jurisdictional** collection methods as additive in determining recyclability, certain provisions within **Cal. Code Regs. tit. 14, § 42355.5 et seq.,** including the **material categorization study**, may not yet fully align with this inclusive intent. To ensure clarity and consistency across California's regulatory landscape, we recommend CalRecycle:

1. **Provide regulatory flexibility** allowing the PRO to optimize film and flexible recycling strategies through both alternative and jurisdictional systems.

2. **Conduct a regulatory review within one year** of SB 54 implementation to incorporate early lessons learned, address emerging challenges, and strengthen alignment across related frameworks.

3. **Engage stakeholders in ongoing dialogue** to harmonize California's recyclability regulations, ensuring consistency between SB 54, SB 343, and related policies while accounting for regional infrastructure, geography, and consumer behavior unique to f lexible packaging.

By adopting these recommendations, CalRecycle can ensure that regulatory systems evolve in step with innovation, promoting clarity, collaboration, and measurable progress toward a circular economy for flexible films and packaging.

Conclusion

We appreciate the opportunity to provide input on this important rulemaking process. The Film Recycling Peer Collaborative strongly supports CalRecycle's leadership and

shares its commitment to achieving California’s recycling and circularity goals. By maintaining f lexibility, leveraging proven systems, and ensuring regulatory alignment, California can continue to lead the nation in advancing practical, scalable recycling solutions for all materials, including flexible films and packaging. We look forward to continued engagement and partnership with CalRecycle as implementation of SB 54 progresses.

Response to O-67-1

Comment rejected. Although the comment discusses various issues for consideration in the event that CalRecycle makes any changes to the proposed regulations, the commenter expressly recommends that CalRecycle adopt the proposed regulations "as written." Because it does not propose any change or raise an objection related to the rulemaking process, no response is required. Even interpreting the comment as recommending that CalRecycle make any changes, CalRecycle declines to do so. Regarding the suggestion "regulatory flexibility," the commenter only requests that regulations allow the PRO "to optimize film and flexible recycling strategies through both alternative and jurisdictional systems." The proposed regulations do not disallow such efforts. Regarding "regulatory review within one year," that is not a recommendation of a change to the proposed regulation but rather a recommendation that CalRecycle evaluate whether to adopted revised regulations in the future. Likewise, a recommendation that CalRecycle "[e]ngage stakeholders in ongoing dialogue" is not a request that CalRecycle change the proposed regulations.

O-68: City of Alameda (Sarah Henry)

Comment O-68-1

This letter is to register the City of Alameda's (City) comments on the formal Senate Bill (SB) 54 regulations released on August 22, 2025. While we understand the need to finalize regulations given the regulatory restart, there are still several areas in the draft regulations that we believe do not fully align with the intent of the law. The City offers the following comments to help achieve alignment with the law's intent to accelerate progress toward circularity for packaging and food ware, protect ratepayers, and make local governments whole for costs associated with implementing the law. Thank you for your consideration of the recommendations below.

Response to O-68-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-68-2

Article 2: Covered Material and Covered Material Categories Categorically Excluded Materials – 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging…."

The City appreciates the revisions made in section 18980.2(a)(2) of the August 2025 (current) version of the draft regulations to clarify these exclusions only apply when "it is not reasonably possible to use other packaging or packaging components…" and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. The City also supports the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

The Department has stated this new categorical exclusion is intended to provide further clarity to statute section 42060(b) which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. The City believes that should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phasein plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Should the Department determine section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:
• Exclusion vs. exemption rationale – Entities should be required to explain why an exemption under section 2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for an exclusion vs. exemption and redirect requests to a more appropriate exemption pathway when applicable.
• Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-68-2

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, which is substantively the same as this comment.

Comment O-68-3

The City is also opposed to the addition of language that exempts packaging used for over-the counter drugs (18980(a)(6), and we oppose the regulatory change that exempts secondary and tertiary packaging of exempted and excluded primary packaging (18980(b)). We feel these changes go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-68-3

Comment rejected. For the reasons stated in response to comment O-49-1, CalRecycle rejects the implied suggestion that no exemption should encompass over-the-counter drugs. Regarding secondary and tertiary packaging, CalRecycle interprets the commenter's objection to be directed at section 18980.2(b), which states that packaging excluded pursuant to Public Resources Code section 42041(e)(2)(A) through (D) includes secondary and tertiary packaging. The commenter offers no support for their opposition to these provisions other than that they "feel" that they were not the intent of the authors and "stakeholders that negotiated this bill." Those are not legally valid bases for opposing the regulation because they are based neither in the statutory text nor any legislative history (stakeholders that "negotiated this bill" are not legislators, nor are their discussions with legislators "legislative history," which encompasses the record of debates within the Legislature, publications in the Senate or Assembly journal before the bill was voted on, and legislative committee reports). CalRecycle also rejects the objection concerning secondary and tertiary packaging for the reasons provided in response to comment I-59-2 and O-33-6.

Comment O-68-4

Article 3: Evaluations of Covered Material and Covered Material Categories Eligibility for Being Labeled “Compostable” – 18980.3.3

Assembly Bill (AB) 1201 prohibits materials from being labeled “compostable” unless they meet specific criteria, including the requirement to be “designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department’s regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations.” (PRC 42357(g)(E))

Section 18980.3.3(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "*if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.*"

This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54 (if other criteria are met). The intent of section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. Section 18980.3.3(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole.

Further, while the SB 54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable.

Response to O-68-4

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

Comment O-68-5

Article 4 – Responsible End Markets Alternative Recycling Technologies – 18980.4(d)

PRC section 42041(aa)(5) states that the SB 54 regulations "shall encourage recycling that minimizes *generation* of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall also include criteria to exclude plastic recycling technologies that *produce* significant amounts of hazardous waste." However, section 18980.4(d)(B) in the current version of the draft regulations goes against this statutory direction and shifts the standard from the *generation or production* of hazardous waste to its *management*.

The draft regulations enable — not exclude — technologies that produce significant amounts of hazardous waste, unlawfully shifting the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and "presents an imminent and substantial risk of harm to public health or to the contamination of the environment" does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in

“substantial compliance with an applicable permit” does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste.

Additionally, the regulations still fail to address the statutory requirement to encourage minimization of the “generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.” (The draft regulations currently only address hazardous waste generation/management.) The City urges the Department to add provisions to address these critical concerns and meet the statutory directives.

Response to O-68-5

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-68-6

Compostability of paper and fiber – 18980.4(a)(4)(C) and 18980.3(c)(4)

Alameda supports the regulatory approach to have different compostability standards for paper and fiber than for plastic. However, with the requirement for testing from an independent laboratory in section 18980.3(c)(4) removed, we are concerned the new proposed compostability standards for paper and fiber may provide a perverse incentive for bad actors to maintain vague or otherwise insufficient documentation demonstrating that the fiber truly is “wholly derived from natural resources.” Some form of verification of or attestation that a product is wholly derived from natural resources should be required to be submitted to the Department.

Response to O-68-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and the recommended change is not necessary to the implementation of the Act. The testing requirement was removed from section 18980.3.3(c)(4) of the proposed regulations for the reason provided in response to comment O-86-3. Moreover, sections 18980.4(a)(4) and 18980.4(a)(4)(C) do not purport to establish standards for the composition of materials, including those comprised of paper or fiber; rather, those sections establish standards necessary for end markets that accept specified materials to be considered responsible end markets. Therefore, section 18980.4(a)(4)(C) is not well-situated to impose additional verification or attestation requirements concerning the composition of paper and fiber materials. Instead, other proposed regulatory provisions already allow CalRecycle to receive the information necessary to verify that end markets process paper and fiber materials consistent with the standards established in section 18980.4(a)(4)(C). For example, section 18980.4.1(a)(2) of the proposed regulations already requires a PRO or Independent Producer to describe in its plan the process by which it will evaluate

whether each end market meets the standards specified in section 18980.4, including 18980.4(a)(4)(C), and this plan description will be subject to both review and comment by the public and advisory board and review and approval by CalRecycle. Additionally, all responsible end markets will be subject to annual compliance audits by an independent third-party under section 18980.4.2(a) to ensure satisfaction of the requirements of section 18980.4, including 18980.4(a)(4)(C). CalRecycle will then have the opportunity to require the PRO or Independent Producer to provide any records necessary to verify responsible end markets under section 18980.4.2(d), including records necessary to verify that applicable responsible end markets satisfy the requirements of section 18980.4(a)(4)(C). Therefore, the proposed regulations already provide CalRecycle with sufficient opportunity to determine whether appropriate paper and fiber materials are being processed by responsible end markets in accordance with section 18980.4(a)(4)(C), and no change is necessary.

Comment O-68-7

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Local jurisdiction requirement – 18980.11(b)

PRC section 42060.5 states "local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material" contained on the statewide recyclable / compostable list. The current draft of the regulations provides that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities."

We believe that including the requirement to also transfer recyclable and compostable covered material goes beyond the statutory requirement for local jurisdictions. This framing also makes it difficult to attribute violations to the correct party, muddying the distinction of where the enforceability of a jurisdiction for a violation of this requirement ends and the point at which that responsibility transfers to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what's expected for compliance and how compliance will be determined.

Response to O-68-7

CalRecycle rejects this comment for the reasons provided in response to comment I-59-7.

Comment O-68-8

Article 13: Enforcement Oversight by the Department

The draft regulations must recognize that SB 54's Enforcement Authority is limited to producers and the PRO and respect that local jurisdictions and recycling service

providers are instead subject to existing enforcement regimes under AB 939. Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 firamework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for 8B 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they include the required recyclable or compostable covered materials in their programs.

The City of Alameda appreciates the CalRecycle team's openness to feedback and continued dialogue to ensure the final regulations will provide a foundation for successful implementation of the law. As in our previous letters, Alameda has a longstanding history of policy actions supporting efforts to reduce our carbon footprint and preserve natural resources with a goal to protect our island community and neighbors. We continue to strongly support the intentions of the law to slow the flow of materials entering our communities, keep materials in circulation through reuse and refill, and create packaging that is designed for recycling or composting at end of life. We reinforce our support for the Extended Producer Responsibility (EPR) requirements put forth in the regulations and maintain that shifting responsibility for the costs of collecting and processing covered materials to responsible end markets from jurisdictions and ratepayers to the producers of the materials themselves is of utmost importance.

Response to O-68-8

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-59-8, which is substantively the same as this comment.

O-70: Sarah Erlich (Sarah Erlich)

Comment O-70-1

The Center for Environmental Health (CEH) submits the comments below regarding the California Department of Resources Recycling and Recovery's (CalRecycle's) proposed regulations to implement Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act ("SB 54"). CEH is a national non-profit organization headquartered in Oakland, California, dedicated to protecting the public from environmental and public health hazards, including harmful chemicals in air, food, water, and everyday products. CEH envisions a world where everyone lives, works, learns, and plays in a healthy environment.

Among SB 54's requirements are that producers of plastic covered material that is imported into, distributed, or sold in California must ensure the material is source reduced and meets graduated recycling rates, which will benefit the environment and the health of Californians.1 SB 54 defines "covered material" in part as "single-use packaging that is routinely recycled, disposed of, or discarded" after opened or used, with some notable exceptions; and plastic single-use food service ware, such as "plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material."2 Additionally, beginning on January 1, 2032, covered material sold, distributed, or imported into California must be recyclable in the state or meet criteria for being labeled as compostable.3 Producers of covered material were required to create and join Producer
Responsibility Organizations unless they met specified criteria, such as specific source reductions of its covered materials and recycling rates by January 1, 2024.4

Response to O-70-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it is preface to the commenter's substantive comments and does not suggest a specific change to the proposed regulations or raise an objection to the rulemaking process. To the extent that following portions of the submission suggest specific changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-70-2

These proposed regulations and associated activities to comply with them must follow the legislative mandate to "minimize disproportionate impacts to disadvantaged or low-income communities or rural areas."5 These proposed regulations will need to be modified to effectuate those objectives. CEH's primary concern regards the absence of an explicit prohibition in the draft regulations against incineration methods such as pyrolysis and gasification, and the use of chemical and solvent-based methods to break down plastic, which the plastic industry misleadingly describes as "advanced recycling" or "chemical recycling."6

The regulations should reflect a ban against “advanced recycling.” SB 54 excludes the following processes from the definition of recycling: combustion, incineration, energy generation, fuel production (with the exception of “[a]naerobic digestion of source separate organic materials”), and “[o]ther forms of disposal.”7 Chemical “recycling” does not qualify as recycling. It produces waste that can be heated into fuel.8 Pyrolysis, a form of incineration, comprises 80 percent of
proposed and active “advanced recycling” facilities in the country, and the amount of plastic it recycles is negligible.9

Moreover, for a covered material to have been properly recycled per SB 54, it must have been transported to a “responsible end market,” defined to benefit “the environment and [minimize] environmental health and safety risks to workers and environmental health risks to the public.”10 SB 54 mandates that CalRecycle’s regulations concerning recycling, “encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.”11 The legislative language continues: “[t]he regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.”12 An advanced recycling facility does not meet the definition of a “responsible end market” as defined in SB 54. Rather, such facilities jeopardize the health and safety of surrounding communities and the workers laboring in them. The Attorney General of California notes that pollutants from “plastic waste feedstocks leach into the environment through the facility’s waste streams, and pyrolysis (plastic melting) units are prone to fire accidents.”13 The Natural Resources Defense Council notes that every type of “chemical recycling” produces “hazardous waste, generate[s] hazardous air pollutants, and/or use[s] toxic solvents.”14 From 2021 to 2024, only three pyrolysis facilities produced greater than two million pounds of hazardous waste.15 In the United States, “chemical recycling” facilities are typically situated in “low-income communities and/or communities of color.”16 Chemicals created by some pyrolysis facilities include benzene, dioxins, cadmium, and other heavy metals.17 Toxic air pollutants that are emitted and/or “permitted to be emitted” by a minimum of one pyrolysis facility include chloroform, formaldehyde, hexachlorobutadiene, hexane, methyl bromide, and vinyl chloride.18 Criteria air pollutants that are emitted and/or are “permitted to be emitted by at least one pyrolysis facility,” includes carbon monoxide, lead, nitrogen dioxide, particulate matter, and sulfur dioxide.19 Other types of “chemical recycling” such as solvolysis and solvent-based purification are techniques that are associated with cancer, developmental toxicity, neurotoxicity, and respiratory toxicity.20

For these reasons, CEH urges CalRecycle to explicitly list the “chemical recycling” processes as banned in its proposed regulations. Thank you

Response to O-70-2

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1. As discussed in greater detail in that response, the proposed regulations are consistent with the requirements of the Act, including in PRC

sections 42041(aa), 42041(ad), and 42060, and the recommended change is not necessary to the implementation of the Act. Also, to the extent this comment suggests the proposed regulations must explicitly prohibit "incineration methods" from the definition of recycling, no change is necessary. As recognized by the commenter, PRC section 42041(aa)(2) already clearly excludes incineration from the definition of "recycle" under the Act, and nothing in the proposed regulations suggests otherwise. Furthermore, to the extent the comment implies that "chemical recycling" be banned outright in the regulations, a complete ban on any technology could have been accomplished through straightforward, specific language in the Act that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology.

O-71: Mojave Desert and Mountain Recycling Authority (John Davis)

Comment O-71-1

18980.2 Exclusions opens the way to forever removing massive amounts of packaging from covered materials responsibility. Since much of this potentially excluded packaging looks like other non-excluded materials we will continue to confuse consumers and burden rate payers with end-of-life handling while non-excluded packaging producers must bear disproportionate costs. Moreover, exclusions are forever while exemptions are time-bound and subject to reconsideration. Please ensure that all packaging ultimately transitions to recyclable and compostable materials and meet SB 54's recycling standards. Exemptions should be authorized only when there are no other packaging options available.

Response to O-71-1

Comment partially rejected and partially accepted. Regarding the claim that 18980.2 would "forever remove massive amounts of packaging from covered materials responsibility," no change to the proposed regulations can reverse exclusions expressly required by statute, such as those pursuant to Public Resources Code section 42041(e)(2). Those are permanent and cannot be rescinded via regulation. To the extent that comment was directed at 18980.2(a)(2), CalRecycle partially rejects the comment for multiple reasons. First, that provision does what the commenter proposes: It authorizes exemptions "only when there are no other packaging options available" (i.e., those that avoid conflicts with federal laws). Regarding the request that CalRecycle "ensure that all packaging ultimately transitions to recyclable and compostable materials and meets SB 54's recycling standards," doing so would contravene statute, which does not require all packaging to be recyclable or compostable: Only single-use packaging is subject to such a requirement, and only packaging that is "covered material," not all packaging. Regarding disproportionate costs, the statute only requires producers (through a PRO or otherwise) to account for the compliance costs attributable to covered materials;

the challenge in performing such accounting is inherent in the statute, which expressly acknowledges that not all single-use packaging is subject to it. Regarding the burden on rate payers for the management of materials that are not covered material, the statute was not intended to reduce that burden. It concerns only the additional costs incurred with respect to management of covered materials. Lastly, to the extent the commenter intended to suggest that conflicts with federal laws be addressed solely through the exemption provisions pursuant to Public Resources Code section 42060(a)(3) and (4) (implemented in section 18980.2.4 of the proposed regulations), CalRecycle declines to do so for the reasons stated in response to comment I-59-2 and because the commenter's assertion that exclusions under section 18980.2.1(a)(2) are not "subject to reconsideration" is incorrect. Subparagraph (E) (formerly subparagraph (B)) expressly provides for reconsideration.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-71-2

18980.3.3 Compostable packaging simply should not include synthetic non-organic materials. California's composting infrastructure is designed to handle organic materials as covered by SB 1383. That infrastructure is not designed to process plastic. A circular economy doesn't force incompatible materials into circular systems. Please ensure that non-organic materials are handled in the recycling system, replaced by reusable products, or prohibited in California as intended by SB 54.

Response to O-71-2

Comment rejected. The comment does not set forth any particular recommendation for revisions to the proposed regulations. If the commenter intended to recommend that the proposed regulations prohibit "synthetic non-organic materials" from being used in "compostable packaging," CalRecycle rejects the proposal because the statute, not regulations, establishes the criteria for eligibility to be labeled "compostable" and requires that CalRecycle rely on those criteria for purposes of Public Resources Code section 42050(b).

Comment O-71-3

18980.8(g) Covered costs in SB 54 are not limited to increased costs or costs of a different nature as proposed in the draft regulations. Although local jurisdictions are to be made financially whole for any new costs, we are collecting and processing covered

materials now and that infrastructure will be integral going forward. It is not possible to achieve the required recycling rates without including already recycled materials and that recycling includes the full range of covered costs. Is the intent to pay only for those programs not now recycling certain materials and not to pay for those already recycling the same materials? Will some communities be paid for new outreach while others must continue ongoing payments for those same activities? How will market value fluctuations be reflected as cost increases for materials already recycled? What is to ensure that capital costs incurred prior to 2023 will be covered to handle additional materials?
"Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products." ((PRC 42040(b)(2))
The PRO plan and budget should fully fund the costs described in PRC 42051.1 (j) (1) (B) as required by PRC 42060.
These costs include:
• Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and
• costs related to consumer outreach and education;
• the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market;
• cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market;
• waste stream sampling and reporting required by this chapter for local governments;
• costs incurred to educate ratepayers to improve the preparation and sorting of covered material;
• and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates.
• These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.
PRC 42060 provides that "The regulations shall include, but not be limited to, all of the following: "1) Any regulations necessary to ensure the PRO fully funds plan implementation, including fully funding the budget. This shall include the costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement this chapter, including, but not limited to, the cost of consumer education and of collection, including the cost of containers where relevant, as well as the processing, storage, and transportation of covered materials. Costs may vary based on population density or other relevant factors and shall allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered material."

Response to O-71-3

Comment rejected. The commenter poses a series of questions and quotes and paraphrases various statutory provisions. It does not propose any particular

changes to the regulations. To the extent the commenter intended to recommend that the proposed regulations be modified so that every cost related to management of covered material waste, not just the increased or new costs incurred due to the statute implemented by these proposed regulations, CalRecycle rejects this comment for the reasons provided in response to comments O-56-3.

Comment O-71-4

18980.11(b) Local agencies or haulers should not be responsible for assuring that covered materials reach responsible end markets. Identification and verification of those markets is the PRO's responsibility and should be removed from local collection obligations.

Response to O-71-4

Comment rejected. Section 18980.11(b) does not state that any entity is responsible for "assuring that covered materials reach responsible end markets." Rather, the first sentence states that it is sufficient for covered material to be transferred to intermediate supply chain entities, and the second expressly states that there is no obligation to establish the availability of responsible end markets. The commenter does not explain how they read that text to have the opposite meaning.

Comment O-71-5

Article 4 Responsible end markets are to be "viable" per SB 54, yet that term does not appear in the draft regulations. Markets should be financially sound and sufficient to cover materials processing costs. Despite California PET post-consumer minimum content requirements we lost two key in-state end markets in the last year.

Response to O-71-5

Comment rejected. The proposed regulations do not use the term "viable" because it is axiomatic that the purpose of "financial support" and the development of responsible end markets is to establish them as ongoing concerns that process cover materials. Such progress is inherent in the PRO's obligations under the statute (e.g., the requirements of Public Resources Code section 42050); those obligations cannot be met without enduring enhancements to recycling infrastructure. Using the term "viable" would therefore serve no purpose.

Comment O-71-6

Article 13 Enforcement against local jurisdictions is contrary to SB 54's specific focus only on producers and the PRO. The statute does not include local agencies in its enforcement provisions and CalRecycle should honor that exclusion.

Response to O-71-6

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation to, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction, not in compliance with the Act is subject to penalties pursuant to section 42081(a).

O-72: Renee Pinel

Comment O-72-1

On behalf of the Western Plant Health Association (WPH), I am submitting these comments regarding CalRecycle's recently released draft regulatory language for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). WPH appreciates the opportunity to comment on this proposed regulation and looks forward to working with CalRecycle moving forward. WPH represents pesticide and fertilizer manufacturers, agricultural biotechnology providers, and agricultural retailers in California, Arizona, and Hawaii.

WPH fertilizer and pesticide manufacturing and distributor member companies have supported agricultural container recycling programs for decades to ensure sound stewardship of these containers. Program parameters for the stewardship and recycling of these unique containers is demonstrated by the Ag Container Recycling Council (ACRC) program. WPH requests that as agricultural container recycling is a unique program, CalRecycle provide an exemption for manufacturers who participate in ACRC from the Circular Action Alliance.

Current Agricultural Collection Program

The ACRC is a nonprofit association that promotes and funds programs in the United States for the collection and recycling of rigid HDPE plastic agricultural chemical containers, including pesticide, specialty pest control, micronutrient, biological, fertilizer, adjuvant and surfactant products. ACRC currently operates in 47 states as the agricultural chemicals industry's not-forprofit stewardship program, strictly following ANSI/ASABE S596 Standards.

The ACRC has operated a specialized agricultural container stewardship program in California for over three decades. ACRC also serves as a compliance mechanism for the California Department of Pesticide Regulation's (CDPR) pesticide container recycling requirements under Food and Agriculture Code §12994 et seq. WPH refers

CalRecycle to the included comprehensive comments submitted by the ACRC for detailed history and performance of the ACRC program and structure.

The ACRC program operates under rigorous EPA standards established in the 2006 Container and Containment Rule (40 CFR Part 165), which requires 99.99% removal of each active ingredient. All containers collected under the ACRC program, including non-Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) containers undergo the strict collection protocols of this program, so all agricultural containers received this higher level of stewardship than other mainstream collection programs.

Response to O-72-1

Comment rejected. The commenter requests that CalRecycle establish a specific exemption for manufacturers who participate in the Ag Container Recycling Council program. However, CalRecycle does not have general authority to create exemptions not established by statute. In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within a categorical exemption (e.g., for reusable packaging or for packaging of goods enumerated in Public Resources Code section 42041(e)(2)) might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate that commenter's concerns, and no change is necessary.

Comment O-72-2

Incompatibility of Proposed Producer Responsibility Organization Program

WPH is concerned that the proposed SB-54 regulations do not contain real protection and pathway recognition for existing high-performing stewardship programs. This will require WPH member organizations to pay both ACRC membership fees and Producer Responsibility Organization (PRO) fees. This will result in a duplicative fee structure that will threaten ACRC program viability and the intended positive environmental outcomes that the ACRC has provided for the last 30 years.

In our initial discussion with CalRecycle regarding implementation of SB 54, it was suggested that ACRC could become a subcontractor for the CAA. After reviewing this suggestion, we do not believe this is a viable approach.

A subcontracting arrangement would create a financially and administratively inefficient structure as ACRC member fees would flow to CAA who would retain funds to administer its overhead and management fees. Remaining funds could then be directed to ACRC in subcontractor payments. However, both organizations would have to bear duplicative administrative and management costs. The result will be the diversion of resources from actual collection operations, reducing the pounds of agricultural containers collected per dollar spent— the opposite of efficient program design.

The resulting administrative bureaucracy and reduced funding efficiency would ultimately harm California growers and agricultural chemical users who rely on ACRC's collection network. Rural collection sites, agricultural retailers, and on-farm collection services operate on very thin margins. Any reduction in program funding, which we believe a subcontractor relationship would result in, would force service reductions in precisely the areas where municipal collection infrastructure is absent or inadequate.

As has been described previously, the stewardship protocols of the ACRC program are not compatible with proposed producer compatibility programs. Agricultural chemical containers possess characteristics that distinguish them from general packaging waste streams. As outlined in comments submitted by ACRC, this unique program differs from standard collection programs because:

- “ACRC handles both FIFRA-regulated pesticide containers (already exempt under the Act) and non-FIFRA agricultural products (fertilizers, adjuvants, and other agricultural amendments) as a unified stream. Requiring segregation would impose impractical operational burdens on farmers and collection sites while creating safety concerns around increased handling of potentially contaminated containers.
- ACRC requires all containers to be triple-rinsed, and decontamination protocols meet EPA's 99.99% active ingredient removal standard, making them unsuitable for standard materials recovery facilities due to pesticide residue contamination risks. This specialized processing meets the criteria for "unique compliance challenges" under PRC §42060(a)(3) and presents "health and safety concerns" under PRC §42060(a)(4).
- The ACRC operates entirely through alternative collection as defined in §18980.1(a)(2)—collection at agricultural and non-residential sites not conducted by local jurisdictions or their contracted service providers. Materials are never commingled with municipal curbside recyclables, meeting a key criterion of §18980.2.3(a)(3)(B).
- The ACRC program unambiguously qualifies as an "alternative collection" program under §18980.1(a)(2), collecting covered materials at agricultural and non-residential sites entirely independent of local jurisdiction curbside programs. The program collects covered materials "regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection," using systematic collection means including drop-off locations at agricultural retailers, on-farm collection, and dedicated collection events—all conducted without involvement of local jurisdictions or their contracted recycling service providers.
- ACRC maintains complete chain of custody documentation from collection through verified end markets (such as agricultural drainpipe, nursery pots, landscaping products, and underground conduit), as required under §18980.4(a)(2) (A), conducts annual third-party audits per §18980.4.2, and achieves recycling yields exceeding industry standards for agricultural container plastics.

- ACRC has provided annual collection and recycling data to CDPR since 2012, demonstrating long-term accountability and transparency. The program operates under ANSI/ASABE S596 standards for agricultural plastics recycling."

Response to O-72-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-72-3

Effective Pathways Forward

WPH supports the legislature's intent through SB 54 to increase plastic recycling. However, we do not believe the current direction of the program, a consolidation of all collection activities under a single organizational structure is in California's best interest. Where specialized, high-performing collection infrastructure already exists and operates independently of municipal systems, CalRecycle should recognize and preserve that infrastructure rather than force artificial integration that adds costs without adding environmental value.

Through the ACRC's heightened environmental and human health protection standards, it eliminates agricultural plastics entering landfills or abandonment in the environment and ensures that agricultural plastics cannot be recycled into products streams that could come in contact with food products, like plastic wraps and containers or grocery bags.

WPH requests that CalRecycle recognize ACRC as an alternative compliance program, and not as a subcontractor. This will allow continuation of the most efficient use of member resources to achieve positive environmental outcomes while eliminating unintended human health exposures.

WPH asks that CalRecycle adopt language approved by the State of Oregon for the collection of agricultural plastics. Oregon's recently adopted regulations (OAR 340-090-0840(2)(d)(D)) specifically exempt rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants, and agricultural amendments produced by ACRC members, conditioned upon maintenance of consistent collection rates, recycling at responsible end markets, annual datasubmission, and periodic third-party audits. This approach preserves proven infrastructure while maintaining accountability through performance monitoring. WPH has included in our submission this amendment to Oregon's Extended Producer Responsibility Program for CalRecycle's convenience.

WPH recommends that CalRecycle adopt a class-wide "Agricultural Container Recognition" under § 18980.2.7 (or equivalent new § 18980.2.8), modeled on a

program-level exemption and justified by the distinct regulatory, logistical, and operational characteristics of agricultural pesticide and chemical containers. The alternative would be the Creation of a "Qualified Stewardship Program" pathway under new § 18980.2.8, tied to the authority in § 18980.2.7 and PRC § 42051(b)(2), allowing CalRecycle to recognize long-standing, high-performing stewardship systems that already achieve SB 54 outcomes independently of the PRO.

Conclusion

WPH is very concerned that if ACRC's program becomes unsustainable, agricultural containers will enter landfills or be burned on farms—which directly contradict SB-54's environmental objectives under PRC §41780.01 and §42040. We believe that exempting the ACRC program and designating ACRC as an alternative collection program will promote a sound Extended Producer Responsibility program that maintains a strong stewardship infrastructure while achieving statutory goals.

WPH urges CalRecycle to expedite providing an exemption for agricultural organizations who are members of ACRC from participating in CAA. This will allow for a seamless continuation of the ACRC program and prevent the risk of duplicate fees and significant funding erosion leading to reduced or discontinued collection. We thank you for your consideration of our comments. If you have any questions, please feel free to contact me.

Response to O-72-3

Comment rejected. The commenter's first proposal is, in effect, for CalRecycle to recognize an alternative to the statutorily mandated PRO program—in other words, the commenter proposes that CalRecycle disregard the statute. CalRecycle rejects that proposal for the reasons set forth in response to comment O-98-3. The commenter also specifically requests that CalRecycle adopt regulatory language adopted by the state of Oregon to exempt agricultural pesticide and chemical containers that participate in a particular collection program. CalRecycle declines to do so because it is beyond CalRecycle's authority under the statute to single out a particular collection program in regulations and declare the materials it collects not to be "covered material." Instead, the statute authorizes exclusions and exemptions based on certain criteria, such as those stated in Public Resources Code section 42041(e)(2)(H). The exclusion authorized under section 42041(e)(2)(H) also renders the proposed change unnecessary because any organization, such as the one commenter identifies, operating an alternative collection program may establish eligibility. In effect, that provision provides the "program-level exemption" that the commenter seeks.

Regarding the attachment to the commenter's submission (the October 7, 2025, letter to CalRecycle under ACRC letterhead), that attachment is included in the rulemaking record but not addressed here because it was also submitted by

another party as its own set of comments. Those comments are O-98-1 through O-98-14. CalRecycle has responded to them separately.

O-73: West Contra Costa Integrated Waste Management Authority (Cliff Feldman)

Comment O-73-1

The West Contra Costa Integrated Waste Management Authority (Recyclemore) supports the intent of SB 54 and we appreciate CalRecycle's efforts to provide regulations to commence shifting to a more circular economy for California as prescribed in SB 54 is achieved. We strongly support the intentions of the law to slow the flow of materials entering our communities, keeping materials in circulation through reuse and refill, and by creating packaging that is designed for recycling or composting at end of life. We also strongly support the EPR intent of the law – to shift the responsibility for the costs of collecting and processing covered materials from jurisdictions and ratepayers to the producers of the materials themselves.

Response to O-73-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-73-2

Topic #1: Funding Sources for Implementation

Chapter 3, Article 1 of SB 54 states that:

Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products. It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.

However, the proposed regulations lack language that specifically: 1) requires service providers to request funding from the PRO for any new costs incurred associated with the implementation of SB 54; 2) prohibits service providers from obtaining funding from local jurisdictions for any new costs incurred associated with the implementation of SB 54; 3) prohibits service providers from receiving cost reimbursements from the PRO and then also recovering those same costs from local jurisdictions ("double-dipping"); and 4) requires service providers to share with affected local jurisdictions any reduction in operational costs resulting from PRO payments. Without those protections in the regulations, the requirements of Section 42060.5 of the Public Resources Code and Article 11 of the draft regulations could become an unfunded mandate on local jurisdictions, with the costs of SB 54 ultimately being incurred by ratepayers and taxpayers instead of by the producers.

Service providers must be prohibited from obtaining or seeking to obtain reimbursements from ratepayers for costs eligible for reimbursement from the PRO, regardless of whether or not the service provider opts to seek reimbursement from the PRO. The express legislative intent is that rate payers do not bear these costs. That intent cannot be assured unless service providers are prohibited from obtaining and seeking to obtain reimbursement of eligible costs from ratepayers.

We appreciate the addition to section 18980.8 of the proposed regulations regarding reimbursable costs which requires that the PRO or Independent Producer "first" notify the local jurisdiction when costs are deemed covered for a recycling service provider. However, while this will be a helpful tool to enhance transparency, it is not a mandate or prohibition under law from including reimbursed costs in ratepayers' rates. We believe that such a prohibition is necessary. The proposed regulations place the burden of enforcement against "double-dipping" on local jurisdictions. We believe this enforcement should be the responsibility of CalRecycle. Below we have provided suggested draft language. We request that this language or similar be incorporated into the adopted regulations in order to ensure the intent of SB 54.

- *Recycling service providers shall request reimbursement from a PRO for any new costs incurred in order to comply with Section 42060.5 of the Public Resources Code.*
- *Recycling service providers shall not request, accept, or obtain funds from Ratepayers, taxpayers, or local jurisdictions for new costs incurred by the recycling service providers in order to comply with Section 42060.5 of the Public Resources Code.*
- *If a service provider receives reimbursement from a PRO for costs incurred in order to implement Section 42060.5 of the Public Resources Code, that service provider shall not request, accept, or obtain funds from Ratepayers, taxpayers or local jurisdictions for reimbursement of the same costs for which they were reimbursed by a PRO.*
- *If a service provider receives funds from a PRO and also receives funds for reimbursement of those same costs from Ratepayers, taxpayers, or local jurisdictions, either before or after being reimbursed by the PRO, that service provider shall refund all such funds to the Ratepayers, taxpayers, or local jurisdictions. The Department shall enforce this requirement, shall investigate related complaints from Ratepayers, taxpayers and local jurisdictions, and may assess penalties on recycling service providers sufficient to achieve compliance.*
- *• If a service provider receives funds from a PRO and the use of these funds results in the service provide achieving process improvements resulting in reductions in cost of operations or monetary savings, that service provide shall refund these reductions in cost of operations or monetary savings directly to the Ratepayers, taxpayers or local jurisdictions.*

Response to O-73-2

CalRecycle rejects this comment for the reasons provided in response to comment O-33-2.

Comment O-73-3

Topic #2: Enforcement Oversight by the Department - Section 18980.13

It is clear that SB 54's enforcement authority is directed toward producers and the PRO, not specifically local jurisdictions. In addition, local jurisdictions are subject to related, yet different statutory enforcement mechanisms. There is no statutory basis to inflict substantive penalties on local jurisdictions, and the direction to impose penalties of up to $50,000 per item per day for violations by local jurisdictions for failure to include covered materials in their collection programs is unconcsionable. **SB 54 does not authorize these penalties, nor expressly target local jurisdictions for monetary fines.** The law authorizes monetary penalties for only PROs, producers, retailers, and wholesalers. (Public Resources Code sections 42080-42084.) This is an error in the draft regulations that needs to be corrected.

References to "PRO" and "producer" appear repeatedly in sections 42080-42084 of the Public Resources Code, the SB 54 enforcement statutory provisions. **There is no reference to local jurisdictions.** In section 42080, "entity" is used to refer to PRO, producer, wholesaler, and retailer. When in section 42081 there is a reference to "any entity," the statute goes on to provide a single exception for small producers, retailers, and wholesalers that are listed in section 42060(a)(5) – with no mention of an exception or extension for certain local jurisdictions or recycling service providers (as in 42060.5(b)), or rural counties/jurisdictions (as in 42060.5(c)), which one would expect to see if they were among the types of "entities" that could be penalized under that section. Producers and PROs are the only specific types of entities mentioned in section 42081. Therefore, "any entity" in section 42081, and all the enforcement provisions of that Article 5, are intended to refer only to producers, PROs, retailers, and wholesalers. There are no other enforcement provisions in the SB 54 statutes. Again, this error should be corrected.

Response to O-73-3

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day per violation to, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction, not in compliance with the Act is subject to penalties pursuant to section 42081(a).

Comment O-73-4

Topic #3: Categorically Excluded Materials – Section 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging…."

We appreciate the revisions made in section 18980.2(a)(2) of the current version of the draft regulations to clarify these exclusions apply only "if it is not reasonably possible to use other packaging or packaging components…" and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

We understand that this new categorical exclusion is intended to provide further clarity to statute section 42060(b), which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within section 18980.2.4(c)(4), under, for example, (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to two to five years, while excluded materials are permanently removed from the law's purview. Care must be taken when excluding materials so as not to unintentionally weaken SB 54.

Recommendation:

We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Should the Department determine that section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

- Entities should be required to explain why an exemption under section 18980.2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for applying an exclusion versus an exemption, and redirect requests to a more appropriate pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):
"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines,~~ and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" because federal guidelines are not always compulsory.

- Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-73-4

CalRecycle partially rejects and partially accepts this comment as described in response to comment I-59-2, which is substantively the same as this comment.

Comment O-73-5

We are also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6). As we understand it, the inclusion of over-the-counter drugs into the list of categorically excluded materials conflicts with the legislature's intent when it enacted SB 54. Over-the-counter drugs already use packaging that is well-suited for source reduction, packaging material changes, and reuse and refill.

Furthermore, we strongly oppose the regulatory change that exempts the secondary and tertiary packaging of excluded materials (18980.2(b)). We believe that these changes are unnecessary and go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-73-5

CalRecycle rejects this comment for the reasons provided in responses to comments O-49-1 and O-33-6.

Comment O-73-6

Topic #4: Methodology for Recycling Rate Determination – Section 18980.3.2

For new covered material categories with a pending recycling rate, it is more rational to presume that they do NOT achieve the required recycling rate under Public Resources Code section 42050(c), rather than that they do meet the rate. Without this presumption, producers could avoid the recyclability requirements by changing to a new form of packaging every year, circumventing the law and unintentionally disadvantaging other producers. It is challenging to determine, and to meet, the recyclability requirements of SB 54, and new items should not be exempt from going through the process that all the other covered items that have met the required recycling rate have had to go through.

Response to O-73-6

CalRecycle rejects this comment for the reasons stated in response to comment O-78-6.

Comment O-73-7

Topic #5 – Eligibility for Being Labeled "Compostable" – 18980.3.3(c)(5)

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC § 42357(g)(1)(E).)

Section 18980.3.3(c)(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste." This language is too broad. Marketing and labeling can be misleading, and are not even mentioned in PRC section 42357(g)(1)(E).

Recommendation:

A potential fix for this issue would be to simply delete the second sentence of section 18980.3.3(c)(5), as follows:

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

~~a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.~~

Response to O-73-7

CalRecycle rejects this comment for the reasons set forth in responses to comments I-59-3 and O-78-7.

Comment O-73-8

Topic #6: Responsible End Market for Plastic Materials

Under PRC Code section 42040 (aa) (3) "**..in order for a covered material to be considered recycled, it must be sent to a responsible end market.**" For plastic materials, under proposed regulations section 18980.4 (b) (4), "***...the end market is the entity that first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin materials for the creation of new or reconstituted products. Such end markets include, but are not limited to, entities that create pellet.***"

The proposed language above would enable the receipt of a bale of plastics at a facility capable of producing pellet from that bale to be counted as recycling – regardless of whether that pellet was ever produced and regardless of whether that plastic was actually ever recycled into a new product. As demonstrated in the SB 54 Advisory Group's report on Plastic Leakage, plastic production in 2025 continues to grow beyond the capacity for collection and recycling programs to capture and recover those materials.

Until the demand for manufacture-ready plastics exceeds the supply, accumulating bales or piles of plastics should not be counted as recycling, as there are no assurances that such stockpiled materials will actually be made into products and there is no tracking mechanism within SB 54 to assure such actual production of a recycled product at any time in the future.

This proposed regulation also creates challenges in assessment of recycling rates at responsible end markets, in that proposed regulations section 18980.4 (a) (4) (A)(i): "***For any period, average recycling yield shall be calculated by taking the total weight of material that has been recycled and dividing it by the total weight of material that has been accepted by the end market and not sent to a responsible end market for further processing.***"

For these reasons we recommend that proposed regulations section 18980.4 (b) (4) be revised as follows: "**...the end market is the entity that first produces plastic feedstock ~~that meets the quality standards necessary to be~~ used in lieu of virgin materials for the creation of new or reconstituted products ready for sale using such plastic feedstock. Such end markets <u>do not</u> include~~, but are not limited to~~, entities that create pellet until those pellets are used to make a product.**"

Response to O-73-8

CalRecycle rejects this comment. See the response to comment O-56-10. In particular, the current language of section 18980.4(b)(4) concerning end markets for material made of plastic is consistent with the statutory definition of "recycling" in PRC section 41041(aa). Therefore, no change is necessary to the implementation of the Act.

Comment O-73-9

Topic #7: Definition of Hazardous Waste

The regulations reference the *federal* definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. This problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

A more appropriate definition is the one already existing in Public Resources Code Section 40141, which defines "hazardous waste" for all of Division 30 of the Public Resources Code except where "the context requires otherwise." That section defines "hazardous waste" to include, but does not limit the definition to, RCRA hazardous waste. It also cross-references Health and Safety Code 25117, which includes any wastes that meet criteria adopted by the Department of Toxic Substances Control (DTSC).

The legislature has repeatedly stated, and the courts have upheld, that "it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law" (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

I thank you in advance for your consideration of these comments.

Response to O-73-9

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

O-74: California Compost Coalition (Neil Edgar)

Comment O-74-1

Our comments are provided below and in the attached .pdf version of the draft proposed regulations:

My comments reflect those of my composter members and are not on behalf of the SB 54 Advisory Board
Despite assertions from producers, CCC has no desire to eliminate or ban compostable packaging. In fact, CA compost manufacturers are receiving and processing hundreds of tons of food-soiled fiber and paper every day.
Bioplastic materials, however, are not functional in collection and composting systems at the scale of services being delivered by commercial operators in CA.
CA Composters have decades of experience in working with the jurisdictions they serve trying to make compostable plastics work and have learned many costly lessons about how they don't.
We fully understand the difference between the investment manufacturers have sunk into making functional packaging for safely delivering food to consumers and what is functional at the end of life in composting facilities that are relied upon to manage that waste.
My members operate composting facilities that have invested millions of dollars in environmental compliance measures and must meet the demands of their primary agricultural markets to manufacture the highest value compost products they can in order to meet very ambitious revenue targets.
Food service ware and packaging marketed as compostable, presents significant challenges to compost manufacturers that impair its ability to function as a circular solution:

Contamination Impacts
Removing contamination from compost during the manufacturing process is job #1 for composters. Quite simply, we need to keep plastics out of compost. Plastics contamination - including from bioplastics which meet lab biodegradation standards in ASTM D6400 - represent the largest threat and processing cost to compost production. As SB 1383 collection programs have increased in number and volume, the costs of removing increasing plastics contamination has risen significantly.
ASTM marketing standards require materials to 90% disintegrate in 84 days and 90% biodegrade within 180 days. Those standards do not reflect the production cycles for commercial composters who must move finished product to market within 90 days. Any partially degraded, visible plastic is very difficult to remove and will devalue the compost.

Lack of Proper Labeling and Enforcement
California has adopted labeling standards for compostable products under AB 1201 (Ting, 2021). Existing statutory requirements, found mainly in Public Resources Code 42357(g), are not being enforced. A large proportion of these products sold in California are not clearly labeled, causing confusion for consumers and adding cost unnecessarily, as they are typically disposed of following costly removal.

Consumer Confusion Leading to Higher Costs and Contamination
Compostable plastics are often confused with conventional disposables (which they are often designed to mimic), leading to contamination in both the compost and recycling streams, increasing processing costs for ratepayers and customers, and reducing the

marketability of material, due to the physical contamination resulting from the acceptance of packaging, at large, with food materials. While fiber and paper compostable products come with their own potential contamination challenges, composters have not found nearly the level of impact on product quality that comes with plastics.

Creates a Permission Structure for Increasing Contamination
Despite signage and other education attempts, many users, lost in the confusion of multiple products, resin types, and conflicting messages carelessly throw all food-associated packaging in the green bin, leading to the need for mechanical separation which wastes additional food and increases costs for processing.

Not Allowed in Certified Organic Agriculture and not Desired by Farmers
California farmers buy over 60% of our compost and want product that is allowable for use in certified organic agriculture as a means of assuring quality. Under the National Organic Program (NOP) rules, plastic is considered a synthetic product which is not allowed, even if it is "compostable".

Toxicity and Microplastics Concerns
Some compostable products still contain harmful chemicals like PFAS, which do not break down during composting and can contaminate soil and water. Other polymers and chemical constituents are also concerning. While the science and understanding of microplastics is emerging there is evidence that in the absence of specific composting conditions (moisture content, adequate temperature) some of these compostable plastics generate microplastics like the conventional plastics they mimic, causing all of the same environmental damage to soil and impairment of plant function.

Thank you for the opportunity to comment.

Section 18980.2. Categorically Excluded Materials

- We fully support a very narrow interpretation for what may be categorically excluded. The goal to migrate covered materials to only circular solutions will be unachievable without a dominant portion of the disposable products being included as contributors to the PRO effort. Any covered materials not explicitly identified in statute and corresponding federal regulations, where the packaging is clearly specified to meet standards for the primary packaging, should not be excluded; they should be required to request an exemption and provide detailed reasoning for justification.

Section 18980.3.3. Eligibility for Being Labeled “Compostable”

- Unclear why CalRecycle removed the definition of "desirable organic waste" which was in the October 2024 15-day draft regs.

- This language appears to give too much room for misinterpretation. It seems to say that any item which is marketed, labeled, or otherwise sold or distributed and tells users to place it in a green bin is eligible to be labeled compostable, regardless of whether it is actually used for the recovery of desirable organic waste.
- We recommend revising this section as per the previous language: (5) They must satisfy the requirement set forth in subparagraph (E) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code concerning association with the recovery of desirable organic wastes. For purposes of this requirement:
- (A) “Desirable organic waste” means food material (as defined in paragraph (20) of subdivision (a) of section 17852 of this division), yard trimmings (as defined in paragraph (43) of subdivision (a) of section 17852 of this division), or an allowable agricultural organic input under the requirements of the United States Department of Agriculture National Organic Program.
- (B) An item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.

Section 18980.4. Responsible End Market Criteria

- We fully support the requirements of this section B. Biological decomposition considers both the disintegration and biodegradation requirements found in the ASTM D6400 marketing standards. For composters to operate as responsible end markets, they cannot have partially decomposed materials as residue in their finished products, within about 90 days from the time they enter active composting.
- typo: inadvertently
- Fiber and paper substrates cannot be held to the same standards as plastics. while plastics will fully biologically decompose, paper and fiber products contain lignins and cellulosic materials that will not fully biodegrade within the compost production cycle (or within 180 days). Composters cannot be required to manage compostable materials in a manner that extends the processing window beyond a reasonable timeframe. Additionally, they must be able to screen out some of the larger pieces of residual paper and fiber to move materials to market in a condition which is saleable. No composters will want to be responsible end markets if they cannot have the ability to manage covered materials in the same manner as other compost feedstocks.
- We disagree that composting facilities are truly an "end market"; they are nearly always an intermediate processor who moves materials to agricultural, landscaping, fire remediation and erosion control "end markets".

Response to O-74-1

Comment partially and partially rejected. Regarding section 18980.2, the commenter states, "[w]e fully support a very narrow interpretation for what may be categorically excluded." It is unclear whether the commenter is expressing support for the proposed regulation as written or recommends that the proposed regulations are not narrow enough. No response is required to comments merely expressing support.

If the commenter intended to suggest that the regulations be narrowed, the only specific recommendation is that exclusions should only apply to covered materials "explicitly identified in statute and corresponding federal regulations, where the packaging is clearly specified to meet standards for the primary packaging" and that "they should be required to request an exemption and provide detailed reasoning for justification." The proposed regulations already require detailed justification for exclusions described in section 18980.2(a)(2). Limiting regulations to concern only packaging "explicitly identified in statute and corresponding federal regulations" is untenable because it is not clear what it means for a statute or regulation to "explicitly identify" packaging; the scope of statutes and regulations typically rely on defined categories of things, not identification of every discrete thing to which they might apply. Also, no application or submission can be required for packaging for products listed in Public Resources Code section 42041(e)(2) because those products are by definition not "covered material." Regarding the implied suggestion that exclusions should only apply to primary packaging, CalRecycle rejects that suggestion for the reasons provided in response to I-59-2 and O-33-6. To the extent the commenter intended to suggest that the exemptions described in section 18980.2.4 are sufficient to address issues related to food and agricultural packaging and conflicts with federal law, CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2.

CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

To the extent this comment generally objects to the breadth of exclusions described in section 18980.2, CalRecycle rejects that objection for the reasons provided in responses to comments O-13-3, O-13-6, I-19-1, I-59-2, O-93-9, O-90-2, O-90-3, and B-47-3.

Regarding section 18980.3.3, "desirable organic waste" is an express term in statute and is mentioned in that section (18980.3.3(c)(5)), which clarifies application of the term with respect to the concept of items "designed to be associated with the recovery of desirable organic waste." CalRecycle rejects the commenters suggestion for the reasons provided in response to comment O-63-8.

Regarding the objection to considering composting facilities end markets, CalRecycle rejects that objection because the statute (Public Resources Code section 42041(aa)(1) expressly states that compost is an output of "recycling," not an intermediate product in a broader recycling process. The settings that the commenter contends are "end markets" are end uses of that output, not materials recovery settings (see Public Resources Code section 42041(ad), defining "responsible end market").

O-75: Californians Against Waste, Coalition of Stakeholders Signed on (Tony Hackett)

Comment O-75-1

On behalf of a diverse coalition of advocates who have been engaged in the SB 54 rulemaking process in its entirety, we write to share our persisting concerns about the language as written. Given the unprecedented scale and complexity of this task, SB 54 presents a generational opportunity to transform how packaging is designed, collected, and recovered, and we are optimistic that CalRecycle will continue to work with diligence in moving this process forward. That said, we are deeply concerned that the current draft regulations fail to incorporate or meaningfully respond to the substantive feedback we and many others provided throughout earlier workshops and comment periods. By disregarding critical recommendations from local governments, recyclers, and environmental advocates, CalRecycle risks weakening the enforceability and effectiveness of SB 54, as well as failing to fulfill its statutory obligations. These omissions threaten to undermine the core intent of the law—holding producers accountable, ensuring program transparency, and driving the systemic changes needed to reduce plastic waste and pollution.

CalRecycle cannot afford to squander this crucial moment. Our comments detail unresolved issues that have not been adequately addressed despite multiple iterations of draft regulatory text and public comment periods. Specifically, our major areas of concern revolve around allowable recycling technologies, the creation of unnecessary exemptions and loopholes, and the need for public transparency in data for deliberative decision-making. Each of these areas is foundational to the success of the overall program.

Also included here are suggestions (‘Attachment 1’) for the Department to issue a ‘Frequently Asked Questions’ plain-language resource that provides clarity on the

recurring questions surrounding implementation. We look forward to working with you to resolve these concerns.

Response to O-75-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-75-2

Article II: Covered Material and Covered Material Categories

Categorically Excluded Materials (§18980.2.) Must Include Mandatory Sunset, Narrowing of Pathway to Exclusion's Scope

FDA/USDA Exclusions Risk Swallowing Covered Materials

The revised draft regulations improve upon prior versions by requiring that packaging excluded under § 18980.2(a)(2) must be those for which it is not reasonably possible to use packaging that also complies with USDA or FDA rules or regulations. The regulations also establish a process where producers must submit the basis of their claim to CalRecycle, which will maintain a public database of exclusions. However, while this clarification narrows the earlier overbroad exemption, the provision still risks sweeping in far more materials than intended by statute.

The reliance on "guidelines"1 as a basis for categorical exclusions is fundamentally flawed, because guidelines do not constitute law. This vagueness creates a boundless loophole where any informal memorandum, nonbinding policy, informal rule, or voluntary guidance document could be weaponized to exempt entire classes of packaging from SB 54's requirements.

As drafted, this section could allow entire categories of food and agricultural packaging to be excluded simply because producers claim it is not "reasonably possible" to use compliant alternatives. Many of these packaging types already have recyclable or compostable options in practice and at scale.

We therefore urge CalRecycle to revise this section to:

- Require producers seeking such exclusions to provide detailed, verifiable justification subject to public notice and comment. Public deliberation on these exemptions/exclusions is a crucial tool in enabling adequate oversight of often opaque regulatory processes.
- Ensure that packaging with available recyclable or compostable alternatives cannot be categorically excluded simply because industry claims such alternatives are inconvenient or less profitable.

- Without these changes, the FDA/USDA exclusion risks creating a loophole large enough to exempt the majority of food packaging—undercutting the recyclability and source reduction objectives at the heart of SB 54.

Exclusions Must Have A Prescribed Sunset
When exclusions are granted, they should also be time-bound in the same way that exemptions are treated. The way that the current regulations are written would give producers *carte blanche* to find a permanent way out of the program, locking in current polluting packaging technologies and stifling future innovation. By having a process where they are forced to reapply for said exclusion, producers would be forced to reconsider alternatives on a continuous basis, rather than having an open invitation for indefinite use of their current packaging formats.

Response to O-75-2

Comment partially rejected and partially accepted. CalRecycle rejects the suggestion to subject exclusions under section 18980.2(a)(2) to a public notice and comment process for the reasons provided in response to comment O-111-2. Regarding the suggestion for a "prescribed sunset," CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2, which also suggests a time limitation for exclusions. CalRecycle otherwise accepts this comment and has revised section 18980.2(a)(2) to address the concerns raised. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-75-3

Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1): Reuse and Refill Standards Regressed and Became Far Too Lax

Lack of Product Standard Floor Might Enable a New ‘Thicker Plastic Bags’ Problem

Throughout this section, language that was once perhaps too lofty in its requirements has now been gutted to no longer include any quantifiable thresholds for measuring performance and defining “reusable and refillable.2” While we don’t have our own perfect solution to offer, it is worth mentioning that recent historical precedent of the ‘Thicker Plastic Bag Problem’ underscores the need for some degree of clearly identifiable enforcement criteria lest packaging manufacturers just race to the bottom.

Following the passage of SB 270 and Proposition 67, California retailers were permitted to offer only reusable plastic bags that met minimum durability standards. These standards were soon found to be far too weak, unintentionally allowing producers to use

plastic bags as long as they were of slightly thicker plastic rather than switch to more sustainable alternatives as was intended.

The thicker bag problem should be a warning: if SB 54 permits minimal or nominal reuse claims, without rigorous criteria for refill infrastructure, number-of-use thresholds, collection systems, and post-consumer accountability, it risks replicating this failure at scale across packaging types; with the opposite legislative intent adding to, and not reducing, California's single-use disposable waste problem

This regulation is far broader in scope, so there are many more opportunities for disingenuous "reuse" designed to skirt the fees and recyclability requirements of the law. To avoid the repeat of this unintended consequence, CalRecycle must:

- Adopt stricter, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity.
- For consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status. The PRO plan should also identify a clear strategy for quantifying the amount of reusable and refillable packaging that is actually reused, as well as outlining steps that the PRO is implementing to maximize these numbers (including through deposits or other incentives).
- Packaging cannot be considered reusable if it doesn't realistically get collected and reused, and the label should reflect that.
- CalRecycle should also establish a process for adopting third-party certification requirements when they become available.

Response to O-75-3

CalRecycle rejects this comment. First, section 18980.2.1(the proposed regulations contain performance-based requirements for producer-refill systems, which must use systematic means to ensure items cycle through the supply chain multiple times. The statute does not authorize stricter performance requirements; instead, the statute relies on infrastructure, design and marketing, and durability requirements to ensure that items will be reused. Second, regarding the proposed requirement that "producers be required to submit . . . data as a condition of maintaining reuse/refill status," that proposal is legally untenable because reusable items are not "covered material," so there is no "producer" of them required to participate in a PRO plan. Instead, section 18980.2.1(a)(1)(A) and (b) establish that CalRecycle may pursue enforcement against any person that is a "producer" notwithstanding that person's claim that they are not a producer, and such a person will have the burden of rebutting CalRecycle's evidence that their items are not reusable or refillable. Regarding the suggestion of a "realistically get collected and reused" requirement, the criteria imposed under Public Resources Code section 42041(af) reflect the Legislature's intent that items meeting those criteria clear that threshold.

Regarding adoption of third-party certification requirement, imposing such a requirement would exceed CalRecycle's authority, which does not include adding independent criteria to those enumerated in 42041(af). CalRecycle's responses to comments B-6-2, O-104-8, and B-38-3 further support rejection of the commenter's proposals.

Comment O-75-4

Exclusion of Certain Types of Packaging (§18980.2.2): Definitional Criteria and Public Process.

Expand Scope of Considerations Beyond Singularly on Process of Composting when Evaluating *de minimis* Exemptions

Today's regulatory language evaluates *de minimis* considerations in part on the basis of if a component or group of components makes "*recycling or composting more difficult* pursuant to subdivision (h) of section 18980.6.7.3." This language specifically focuses on the ease of composting rather than on whether there is a contamination-free, quality end product. This language is unnecessarily problematic in previously unanticipated ways. For instance, a plastic liner or coating on a foodservice ware item wouldn't *necessarily* affect the composting process directly, but it would contribute to microplastic pollution in soils and be an undesirable contaminant in the end product. This example and others like it represent an opportunity to open the floodgates to allowing unlimited product contaminants as long as they don't pose a risk to the general ease of composting. As such, we suggest that language be revised to widen the scope of scrutiny across multiple categories of potential impact, from process to product, ultimately to ensure uncontaminated soil that can be used with confidence on California commercial crops and in residents' community and home gardens

Response to O-75-4

CalRecycle rejects this comment because the proposed regulation, contrary to the commenter's assertion, already "widen[s] the scope of scrutiny across multiple categories of potential impact." The commenter even concedes that the "de minimis considerations" are only "in part" based on whether components make "recycling or composting more difficult." Despite that acknowledgment, the commenter goes on to claim that the proposed regulations render it sufficient that components "don't pose a risk to the general ease of composting." To the contrary, subparagraph (E) of section 18980.2.2(b)(2) addresses the concerns the commenter raises.

Comment O-75-5

Vague and Insufficient Definitional Criteria for Eligibility Need Further Detail

We remain deeply concerned that the proposed de minimis exemption is drafted in a way that continues to lack enforceable thresholds and opens the door to abuse. While the new text introduces a definition of "independent plastic component" and lays out a

multi-factor test for whether a component is of *de minimis* weight or volume, the operative standards remain vague and subjective.

One major loophole is in the definition of an Independent Plastic Component. The new definition excludes coatings, films, stickers, and labels from being considered “independent plastic components.” This could allow producers to continue using problematic films, foils, shrink labels, and barrier coatings while arguing they are *de minimis* because they are not separately detachable and thus ‘independent components4.’ These are precisely the materials that routinely contaminate MRF streams and frustrate recyclability and compostability, directly undermining the statutory requirement in PRC § 42050(b) that packaging be recyclable or compostable in practice and at scale.

The impact is the creation of a perverse incentive to deliberately fragment packaging into ‘non-countable’ subcomponents to strategically fall below the *de minimis* threshold. This risks creating a perverse incentive for packaging design to evolve toward more hidden plastics—small films, detachable liners, and coatings—that erode source reduction and recyclability goals, and frustrate the intent of the law.

While we recognize the need to exempt incidental elements not associated with harm to the environment or human health, the current proposal does not contain the necessary specificity to prevent abuse by ensuring these crucial parameters are respected. By removing objective criteria (such as the prohibition on chemical or thermal separation) and relying on vague, discretionary standards, the draft risks opening a backdoor for widespread noncompliance. Unless clarified, the *de minimis* provision may encourage a “race to the bottom” in packaging design, contrary to both the intent and the express requirements of SB 54.

Response to O-75-5

Comment rejected. The commenter impliedly recommends "objective criteria" and requests that 18980.2.2(b) be "clarified," but, except as discussed below, offers no particular proposals, so no further response is possible.
The commenter's objection to the definition of "independent plastic component" ignores the plain meaning of "independent." For example, a coating is not a discrete thing that can be removed from its substrate, so it cannot reasonably be called "independent" from that substrate. The commenter's concern is also overstated: Just because the materials of concern may not be "independent plastic components" does not mean that they are of de minimis weight or volume. To the contrary, materials presenting the problems that the commenter identifies would not satisfy the other criteria in 18980.2.2(b)(2). Similarly, components that experience chemical or thermal separation would present problems that would likely disqualify them from being considered de minimis. In other words, the criteria have the effect the commenter desires.

Comment O-75-6

Procedural Transparency Should Be Obligatory

The current version permits producers or PROs to submit exemption requests for de minimis designation with no clear public notice, stakeholder input, or third-party review process. Even with the Department's intent to publish approved components online and have other documents available under Public Records Act requirements5, the regulations lack data transparency that is communicated to the public outside of the Department as an intermediary filter. To promote transparency and fairness, all exemptions must be handled through an open process with input from both the advisory committee and members of the public.

Response to O-75-6

Comment rejected. Handling all exemptions through an "open process with input from both the advisory committee and members of the public" would results in a process that could not be administered with the timeliness reasonably necessary for program implementation and for regulated entities' compliance obligations to reflect the practical realities that the de minimis and other exclusions were intended to accommodate.

Comment O-75-7

Exemptions for Certain Covered Materials (§18980.2.4): The Exemption Application process must include public deliberation.

Exemption Process Should Immediately Be Public Record

The proposed exemption process for packaging based on "unique challenges for compliance6" doesn't have any requirement that decisions be made in an open forum with input from the public. Despite subsection (d) of 18980.2.4 proclaiming that applications are "public documents subject to mandatory disclosure under the California Public Records Act7," there is no mandated transparency in the regulations, and is instead reliant on the public requesting data. Given the wide range of possible applications, it is imperative that any proposed exemption only be granted with public input. Our recommendations for public deliberation include the following:

- The Department should only adopt exemptions at a duly-noticed public meeting, including, but not limited to, the monthly public meeting, after providing an opportunity for public comment.
- Additionally, adoption of any exemptions should become part of the public record, such that individuals can confirm which material exemptions are relevant and up to date.
- A component of information required for potential exemptions should be the type of recycling/processing used, such that communities disproportionately affected by certain technologies (contrary to the express intent of the legislation) have access to meaningfully engaging in the public deliberation process.

Response to O-75-7

Comment rejected. The public process described by the commenter would be impractical and would result in CalRecycle being unable to consider all exemption requests within a reasonable time. The proposed regulations appropriately mitigate the risk of CalRecycle granting undesirable or unjustified exemptions by requiring extensive justification and limiting the duration of exemptions. See, also, response to comment O-45-5.

Comment O-75-8

Article III: Evaluation of Covered Material and Covered Material Categories

Recyclability (§18980.3.): Audit requirements should be strengthened to avoid oversimplification.

Audits must be randomized and representative of the entire supply chain; must be strong enough to ensure compliance.

The regulations currently require annual audits of two intermediate supply chain entities and two end markets8 when evaluating participant producer compliance. It is unclear if two of each type of facility will be sufficient for a given material type, and a better approach might be to use percentages, along with a framework similar to that established in the SB 1383 Route Review requirements (Cal. Code Regs. tit. 14 § 18995.1), which requires jurisdictions to "have an inspection and enforcement program that is designed to ensure overall compliance with this chapter." Additionally, a percentage-based approach would make more sense than a static number to ensure that audits sufficiently evaluate compliance with the regulations and represent different strata of the market chain itself. For instance, the regulations could require "visits to intermediate supply chain entities and markets that, respectively, collect, process, or recycle 75% of the material under investigation." Having a flexible, percentage-based approach would ensure greater compliance and more certainty with regard to intermediate supply chain entities and end-markets that are fully responsible and receiving just scrutiny.

Response to O-75-8

Comment rejected. The suggestion to add a provision expressly requiring an "overall compliance with this chapter" requirement is unnecessary because the proposed regulations already have the effect that such a change would have: 18980.3(f)(1)(C) states minimum conditions that must be met (including the numbers of visits required to certain entities), but the overarching express requirement is that audits and investigations must "ensure that the covered materials . . . continue to meet the requirements [pursuant to section 42355.51(d)(4) or (5)]." Regarding a percentage-based approach, that change would not necessarily add flexibility, but rather would change the nature of the minimum conditions that the PRO must meet. CalRecycle declines to take that approach because it would not necessarily improve the calibration between the

scope of conducting audits and investigations and the proof required to reasonably verify compliance.

Comment O-75-9

Independent Third-Party Validation of Postconsumer Recycled Content (§18980.3.4): PCR content calculations must explicitly prohibit the use of mass balance credit methods.

The incorporation of real postconsumer recycled content into products can be a powerful tool to stimulate the demand and usage of recycled materials, creating a financial incentive to increase the recovery of these materials and reducing the dependence on virgin natural resources. It is for this reason that SB 54 encourages producers to use postconsumer recycled content in covered material.

Producers, in California and elsewhere, have argued for the use of mass balance credit methods to be allowed as part of recycled content accounting. If such methods are allowed, this would undermine the effectiveness of SB 54 since mass balance credit methods enable producers to use virgin materials, which are labeled/certified as "recycled" and then claim that they are incorporating recycled content. In some cases, these credit methods can skirt the intent of SB 54 and allow plastic to be turned into fuel to create fake recycled content credits, which are then assigned to virgin plastic. Mass balance credit methods are deceptive and should explicitly not be allowed in the SB 54 regulations since they will incentivize greenwashing rather than real recycling and recycled content.

Response to O-75-9

Comment rejected. It is unnecessary to single out and prohibit any particular method of accounting for recycled content because the evaluation required under 19880.3.4(b)(4) already enables CalRecycle to consider flaws like the ones the commenter identifies with so-called "mass balance credit methods." In particular, (b)(4)(A) requires a showing that any alternative to the Association of Plastic Recyclers (APR) certification program will adhere to standards at least as stringent as does that program and provide more consistent and accurate assessments of recycled content.

Comment O-75-10

Article IV: Responsible End Markets

End Market Identification (§18980.4.1): Provisions around recycling technologies are dangerous, inconsistent with statutory requirements, and antithetical to legislative intent

Approval of Non-Mechanical Recycling Technologies

Minimum Performance: 'Management…in compliance with a Permit'9

Section 18980.4.1(d)(B), when considered in conjunction with the rest of Section 18980.4.1(d), indicates that chemical recycling facilities generating hazardous waste that is produced and disposed of in "compliance with an applicable permit10" are allowable under the regulations, disqualifying them as generating "significant amounts of hazardous waste." This means that these technologies are effectively automatically allowed under the regulations, no matter how much hazardous waste is produced, since the litmus test for approval is solely 'substantial compliance' with a permit they would have needed to obtain in order to operate anyway. In effect, this creates a legally tautological requirement under which no amount of hazardous waste would be considered "significant."

By construing the hazardous waste provision in a manner that largely nullifies its operative force, the Department renders the Legislature's deliberate choice of language null and void, contrary to the presumption that each word in a statute serves a purpose. The proposed interpretation contravenes the surplusage canon11, a settled principle of statutory construction which requires that effect be given to every word and clause enacted by the Legislature, such that no portion of the statute is rendered redundant, inoperative, or devoid of meaning.

Additionally, compliance with applicable permits may vary by jurisdiction, making enforcement difficult or impossible. Per Section 18980.4.1(d)(B), compliance with permitting may be different in different jurisdictions, and this provision applies to end markets, which may be outside California. This would impose unequal requirements for the same technology in different jurisdictions for meeting a California requirement focused on the amount of hazardous waste generated. Accordingly, this would exacerbate historic waste colonialism by encouraging the siting of polluting technologies in the parts of the U.S. and the world with the fewest environmental protections.

Insufficient Evaluatory Metrics/Criteria

Conflation of Risk and Amount

The definition of "significant amounts of hazardous waste" in Section 18980.4.1(d)(1)12 and Section 18980.4.1 (d) (B)13 is problematic. SB54 language refers to the amount of hazardous waste, not the "risk" associated with it, and these are clearly different standards. The proposed regulatory framework in this regard is also clearly and critically at odds with the SB 54 statute.

As mentioned in the letter submitted to the Governor on behalf of a myriad of legislators14, this unlawfully shifts the standard from the production of hazardous waste (as required by the statute) to its management, which directly conflicts with the legislative intent to exclude technologies based on the generation, not governance, of hazardous waste.

Weakness in Defining 'Hazardous Waste' - Federal vs. State15

The regulations reference the federal definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. Use of the weaker federal definition problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

Section 25117 of the California Health and Safety Code clearly states that "hazardous waste" means "a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141."

The legislature has repeatedly stated, and the courts have upheld, that "it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law" (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

Divergence from Department Precedent on Definition of 'Hazardous Waste'

CalRecycle's proposal to rely on the federal RCRA definition16 of "regulated hazardous waste" (40 CFR part 261) for SB 54 implementation is inconsistent with how CalRecycle and its partner boards define and use "hazardous waste" elsewhere in Title 14 and Title 27 of the California Code of Regulations, where the agency repeatedly anchors to DTSC's California definition in Health & Safety Code § 25117 and Title 22, Division 4.5. For example, Title 27's joint CalRecycle/SWRCB technical definitions make "hazardous waste" expressly coextensive with Title 22 ("any waste which, under … Title 22 … is required to be managed according to Division 4.5 of Title 22"), and ties "hazardous constituent" to Title 22 Chapter 11/Appendix VIII, not federal RCRA alone.

In Title 14, CalRecycle's Household Hazardous Waste definitions incorporate HSC § 25117 by reference for "Hazardous Waste," and multiple construction & demolition/inert debris provisions exclude materials that are "hazardous waste as defined in Title 22, § 66261.3 et seq.," again deferring to California's state definition rather than importing federal RCRA scope.

Using the federal definition in SB 54—where the rest of CalRecycle's solid-waste framework consistently points to California's existing definitions—creates an unnecessary and incongruent departure from agency precedent and risks narrowing California's protective coverage for hazardous characteristics that are broader under state law.

For instance, some illustrative examples where CalRecycle regulations rely on existing California definitions for Hazardous Waste rather than RCRA definitions:

- 27 CCR § 20164 (Technical Definitions): “Hazardous waste” means any waste required to be managed under Title 22, Div. 4.5; “hazardous constituent” cross-references Title 22, Ch. 11/App. VIII; “regulated hazardous waste” points to § 66260.10 (Title 22).
- 14 CCR § 18502 (HHW Definitions): “Hazardous Waste (HW)” incorporates HSC § 25117 (DTSC’s statutory definition) within CalRecycle’s HHW program definitions.
- 14 CCR § 17225.32 (Minimum Standards—Definitions): “Hazardous Wastes” expressly tethered to HSC § 25117 and related California definitions.
- 14 CCR §§ 17381, 17388 (C&D/Inert Debris): “Inert debris” may **not contain hazardous waste as defined in Title 22, § 66261.3 et seq.—an explicit reliance on DTSC’s regulatory definition.

Because CalRecycle’s own rules overwhelmingly anchor “hazardous waste” to the state’s existing Title 22/HSC § 25117 framework, importing the federal definition for SB 54 is incongruent with CalRecycle’s established regulatory practice.

Reference to Inappropriate ISO Standards17

ISO 59014:202418 does not define 'recycling,' nor does it establish criteria relevant to environmental safety, GHG emissions, or human health. Its focus on material tracking and internal process management is wholly insufficient to serve as a proxy for SB 54’s environmental justice and pollution minimization mandates. Referencing ISO 59014 misleads stakeholders into believing it aligns with California's goals when it demonstrably does not.

Staff comments during the workshop indicate that this ISO standard is intended to be a proxy for the requirement that “the department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.” ISO 59014:2024 does not address (or even reference) the majority of these criteria.

Furthermore, the aforementioned ISO standard does not even define recycling at all, let alone in line with the statutory definition of recycling, nor does it include a single environmental or efficiency benchmark to distinguish legitimate recycling operations from fraudulent, toxic, and climate-harming operations. Instead, the ISO proposes soft, optional, qualitative guidelines for material recovery operators to standardize their operations from a labor and circular economy aspect (e.g., recommendations on types of data to collect, and on types of policies to include) and is a purely non-binding standard.

In fact, unlike California law, this ISO standard does not consider energy recovery a form of disposal and promotes the use of a very narrow Life Cycle Analysis, which ignores issues around toxics and human health concerns and environmental pollution.

Infrequently Reported Facility Level Information

The proposed regulations still allow PROs and Independent Producers to approve non-mechanical recycling technologies, including so-called “chemical recycling,” with CalRecycle review. Facilities must now submit information on throughput and hazardous waste generation (§ 18980.4.1(d)(4)19), but this requirement is tied only to initial reporting. A facility could easily demonstrate minimal hazardous waste at pilot scale, secure approval, and then expand operations or shift feedstocks to produce significant hazardous waste without triggering a new review. The definition of “significant amounts of hazardous waste” is narrowed to weaker federal standards, and the prior requirement to evaluate risks against mechanical recycling baselines has been removed.

This structure undermines both transparency and accountability, while violating the legislative intent of SB 54. Although records submitted to CalRecycle are nominally subject to the Public Records Act, large portions can be withheld as trade secrets, leaving the public in the dark on hazardous waste, costs, and climate impacts. To prevent abuse, the regulations must explicitly require facilities to re-enter the approval process when scaling up, changing or adding technologies, or processing new covered materials. They must also restore comparative evaluation against mechanical recycling and ensure that hazardous waste and whole-lifecycle climate impact data, including the significant climate footprint from the production and management of solvents used in recycling operations,20 are publicly accessible. Without these safeguards, the rules risk enabling unproven or polluting “chemical recycling” projects under the guise of compliance, in direct conflict with the intent of SB 54.

Language Should Reflect Unequivocal Prohibition on Chemical Recycling

Leaving the approval of recycling technologies solely to the discretion of the Producer Responsibility Organization (PRO)—as currently permitted under the draft regulations—undermines the objectivity, transparency, and environmental rigor required by SB 54. The PRO, by design, is a producer-led entity with a fiduciary and operational interest in minimizing compliance costs for its members. Granting the PRO unilateral authority to determine which technologies qualify as "recycling" creates an inherent conflict of interest that threatens to weaken the law’s core requirements.

Under Public Resources Code § 42051.1, CalRecycle is directed to ensure that packaging is recyclable in practice and at scale. That determination must be grounded in science, operational evidence, and public accountability—not left to an industry-governed body with incentives to greenlight technologies that may have questionable environmental outcomes, such as pyrolysis, gasification, solvolysis, solvent-based technologies, and similar technologies , so long as they are good for their members’ bottom line

To safeguard SB 54's credibility and intent, all recycling technology approvals must be subject to final CalRecycle review, with decisions made during publicly noticed monthly meetings, after:

- Meaningful public comment;
- Technical vetting by independent experts; and
- Clear findings regarding environmental safety, yield efficiency, and alignment with California's waste hierarchy.

This public, science-based process built into the statute ensures that "recycling" maintains its integrity, avoids regulatory capture, and reflects the law's intent to advance genuine circularity, not just a green-washed chemical conversion or incineration masquerading as recycling. The baseline for a process like this should be overseen by the regulatory agency, not by the companies and industry via the PRO.

Furthermore, CalRecycle must defer to the legislative history reflected in both Senate and Assembly analyses and Senator Allen's21 unambiguous statement when answering future queries on whether waste-to-energy and related technologies constitute recycling under SB 54.

Response to O-75-10

CalRecycle rejects this comment for the reasons provided in responses to comments O-62-1 and O-90-15. Also, regarding the commenter's reference to statements by a legislator after the Legislature voted on SB 54, it is legally proper for CalRecycle to look to legislative history when interpreting a statute, but any statements made after the Legislature's vote on a bill cannot be "legislative history."

Comment O-75-11
End Market 'Viability' is Ignored

While the regulations refer to a "viable responsible end market" as a responsible end market that is feasible and capable of being economically successful, there are no clear criteria for "viability" – especially given the viability requirement is only mentioned one time in the entire draft regulatory text. The regulations must be amended to require a company proposing a new recycling end market to demonstrate a track record of viability at scale.

Manufacturers have pledged recyclability for the packaging for decades, often without anything to show for it. Recovering a material that has never been effectively recycled is not "viable," and this needs to be explicitly addressed in the regulations to avoid intentional delay by packaging manufacturers that want to see material as long as possible, even when they know they will never hit the ultimate targets in the law.

The statute sets a clear baseline that should eliminate problematic material types *prima facie* if the market for recycling those materials is not sustainable or solvent. To this end, CalRecycle must provide further clarity on what a viable, responsible endmarket looks like relative to a non-viable one, as well as publish guidance about how the PRO should enhance or expand access to new viable endmarkets.

Absent a functional definition of 'viable responsible endmarket' in statute or the regulations, it will be impossible for the Department or the PRO to ensure that covered material recycling is occurring in a way that prioritizes sustained investment into industries with a proven track record of success. We would urge the Department to also include a requirement for the end market technology to have successfully demonstrated a meaningful recovery rate in a comparable producer responsibility program. As such, viability and financial solvency are of utmost importance in ensuring that Responsible End Markets remain a core fixture of the PRO's planning efforts. Additionally, it should be noted that a system where each material producer is responsible for the cost of recycling that material is crucial to prevent "punishing" highly recyclable material producers by using their money paid to the PRO to cover the cost of recycling less recyclable covered materials. Building this stipulation into the PRO funding structure is essential to ensure the equitable treatment of producers. Similarly, eco-modulation should be differentially calculated based on material type and impact, and fees collected should similarly be directed to mitigate the impacts of each.

Response to O-75-11

CalRecycle rejects this comment. To the extent this comment recommends revising the proposed regulations to define and clarify the criteria for viability, see the response to comment O-71-5. Additionally, the proposed regulations are consistent with the requirements of the Act, including PRC sections 42051.1 and 42060, and no change is necessary to the implementation of the Act. Relevant statutory provisions, including, for instance, PRC section 42051.1(c)(1), already require a PRO to describe in its plan how it will meet the requirements of the Act, including how it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of PRC section 42050. That plan will then be subject to review and approval by CalRecycle. Section 18980.4.3 of the proposed regulations implements these requirements by further clarifying the scope and extent of a PRO's responsibility to describe its financial investments in recycling infrastructure in its plan. Therefore, the proposed regulations strike an appropriate balance between extending the necessary discretion to the PRO in developing its financial investment strategy and offering clear guidance as to the requirements it must satisfy while reserving an opportunity for CalRecycle to review and approve a PRO's plan and budget.

To the extent this comment recommends requiring producers of covered material to be responsible for the cost of recycling that material, no change is necessary. PRC section 42053(d)(1) already requires a PRO to base producer fees on the costs to ensure each covered material category meets the requirements of the

Act. Indeed, that section explicitly provides that covered material that is easier and less expensive to recycle or compost or that is designed to be recycled into a similar covered material or a material that is easier to be composted shall be subject to lower fees. PRC section 42053(d)(2) similarly requires that the increased costs or difficulty of recycling specific covered materials be reflected in the fees for those materials. Section 18980.6.7, including section 18980.6.7(e), of the proposed regulations implements these requirements by specifying that the PRO must consider relevant factors, including data pertaining to recycling rates, in establishing base fee rates. Finally, both the Act and the proposed regulations, including PRC sections 42053(e) and (f) and sections 18980.6.7(d) and (f) of the proposed regulations, already ensure that eco-modulated fees will be structured based on material type and impact and will be collected to mitigate the impacts of each. Therefore, the proposed regulations are sufficient and no change is necessary.

Comment O-75-12

Responsible End Market Criteria (§18980.4.): Threshold for non-degraded fraction of compost is an impossible standard, must be reduced or eliminated

Full biological decomposition is an impossibility

The regulations require that “must fully biologically decompose22.” While the intent here is laudable, it is unlikely that even naturally occurring organic materials would meet a requirement for 100% degradation, especially within the same timeframe as other biologically degrading materials of diverse organic chemistry. With current technologies, setting the threshold at 100% makes this a nearly impossible standard to meet, and will result in the effective prohibition of ‘compostability’ as a compliance pathway under SB 54. We suggest using compliance with the applicable evolving and most up-to-date ASTM Standards as a proxy for ensuring the inherent degradability of covered materials. Specifically, making use of ASTM D6400 and D6868 would allow for congruency with other state and federal definitions of compostability.

Response to O-75-12

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act. For the reasons identified in response to comment B-6-5, the distinct standard established by section 18980.4(a)(4)(B) is appropriate because it accounts for the particular environmental and public health risks presented by covered material partially or wholly comprising plastic. Moreover, CalRecycle rejects this comment to the extent it asserts that the standard of section 18980.4(a)(4)(B) is impossible. Section 18980.4(a)(4)(B) clearly provides that the requirement for full biological decomposition refers to the complete biodegradation and disintegration of the material under controlled composting conditions, resulting in its conversion to carbon dioxide, water, biomass, and inorganic compounds, with no visible, distinguishable, or toxic residues remaining after the composting

cycle. This requirement for full biological decomposition refers to the processes and scientific principles commonly understood to underlie the conversion of materials into compost. This is a reasonable and attainable standard that is tailored to the particular environmental and public health risks presented by the affected material type, consistent with PRC section 42041(ad). Therefore, no change to section 18980.4(a)(4)(B) is necessary.

Comment O-75-13

End Market Identification (§18980.4.1): Producer Data should be required to be submitted to CalRecycle in addition to the PRO

Submission of Producer Data to the Department should be Compulsory

The regulations propose that producers be required to produce compliance records to the Department "upon written request23". This is insufficient for proper regulatory oversight by the Department, the Advisory Committee, and members of the Public. It must be a requirement that these records are annually submitted to CalRecycle, without exception. Any data that is exempt from disclosure requirements should be provided to the public and the advisory committee in aggregated form, if applicable, with trade secrets redacted. However, it is not enough for the Department to only reactively request this data – instead, it should adopt a proactive approach of requiring this data annually and reviewing these submissions as frequently as needed.

Response to O-75-13

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(ad), 42051.1, 42060, and 42080, and the recommended change is not necessary to the implementation or enforcement of the Act. PRC sections 42051.1(c)(1) and (2) require a PRO to describe in its plan how it will meet the requirements of the Act, including how it will provide for the necessary infrastructure and viable responsible end markets to ensure the covered materials achieve the requirements of PRC section 42050, and how it will support and achieve the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered materials to meet the requirements of the Act. Moreover, PRC section 42051.1(m)(4) requires a PRO to include in its plan record maintenance protocols sufficient to demonstrate whether each producer participating in the plan has complied with the requirements of the plan and the Act, including the requirement to ensure covered materials are recycled at responsible end markets satisfying the criteria of PRC section 42041(ad), for at least the previous three years. Additionally, PRC section 42080(a) authorizes CalRecycle to conduct investigations, including by inspecting operations, facilities, and records of producers and PROs, to determine whether entities are complying with the requirements of the Act. Section 18980.4.1(c) of the proposed regulations implements these requirements by requiring a PRO or Independent Producer to maintain records necessary to demonstrate that end markets satisfy the requirements to be considered a responsible end market for a minimum of

three years and to further provide such records to CalRecycle upon written request. The requirement of section 18980.4.1(c) ensures that CalRecycle can receive and review any record concerning a responsible end market that it considers necessary or relevant to carry out its enforcement obligations under the Act, while also avoiding any burdensome or costly requirements mandating the production of all records that are not relevant and do not otherwise facilitate CalRecycle's enforcement activities under the Act. By only requiring relevant records to be provided upon written request, section 18980.4.1(c) minimizes costs and administrative burdens for both the PRO and CalRecycle. The recommendation of this comment—i.e., to require the annual production and review of all records—would go beyond the requirements of the Act and would impose unnecessary expenses on the PRO and CalRecycle. The proposed regulations therefore strike an appropriate balance between providing CalRecycle with all necessary information to enforce the Act, protecting facilities' information to an appropriate extent, and minimizing costs in compliance with the requirements of the Act.

Comment O-75-14

Article VI: Requirements for the Producer Responsibility Organization

Eco-modulated Fee and Fee Schedule (§18980.6.7) Regulations Must Provide Greater Detail on How Malus Fees Should be Assigned to Covered Products Containing Toxic Chemicals

SB 54 requires fees for PRO participants and directs that the fees be adjusted with malus fees or credits, based on various delineated factors. CalRecycle's proposed regulations provide detail on several of these factors, with CalRecycle explaining that "[b]y presenting a list of items, further detailed below, this subsection clearly lays out requirements related to the fee, so that a PRO and participating producers can readily understand how the PRO must assess it." Similar detail is required for the factors specifying malus fees and credits related to the presence of toxic heavy metals or additives in plastic that can make recycling harder or embed toxics in the recycled plastics—these factors are not addressed in the regulations. CalRecycle should include provisions in the regulations that give greater specificity to what pathogens, heavy metals, or additives should result in credit or malus fee adjustments.

Response to O-75-14

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053 and 42060, and the suggested change is not necessary to the implementation or enforcement of the Act. PRC section 42053(d) authorizes a PRO to structure the producer fee schedule as it deems necessary to ensure the requirements of the Act are met, and PRC section 42053(e) authorizes it to adjust those fees based on the factors set forth in that section. Consistent with PRC sections 42053(e)(8) and (9), the proposed regulations reserve the adjustment of fees based on the presence of toxic heavy metals, pathogens, or additives to the discretion of a PRO. This is

consistent with the overarching framework of the Act, which tasks a PRO with the responsibility to develop a plan and budget that is sufficient to meet the requirements of the Act. Section 18980.6.7(f) of the proposed regulations implements the statutory requirements by further providing that a PRO must include a justification along with any fee adjustment under PRC sections 42053(e)(8) and (9). CalRecycle will then have the opportunity to review and determine whether the proposed budget and producer fee schedule meet the requirements of sections 42053(d) and (e) under section 18980.6.2 of the proposed regulations. Therefore, the proposed regulations strike a balance between reserving the appropriate and necessary amount of discretion for the PRO to structure the producer fee schedule while maintaining sufficient opportunity for effective review and oversight by CalRecycle. No further change is necessary.

Comment O-75-15

The Department has one chance to implement SB 54 faithfully and in full alignment with the Legislature's intent. If the regulations fall short—by permitting "chemical recycling," allowing broad exemptions, or creating definitional loopholes —the credibility of the entire law will be jeopardized along with its effective implementation. Californians cannot afford a hollow framework that replicates past policy failures and shifts burdens back onto the public. We therefore urge CalRecycle to correct the serious deficiencies outlined in this letter and adopt a regulatory package that is clear, enforceable, and uncompromising in holding producers accountable. Getting this right is not optional; it is essential to the integrity of SB 54, the health of California's residents and iconic environment, and the state's leadership in solving the plastic pollution crisis. We also encourage the department to build our plain-language resources/guides (such as the Annotated FAQ Guide in Attachment #1) to create clarity and certainty before ambiguity invites unavoidable, necessary future litigation. Thank you for your consideration.

Response to O-75-15

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it reiterates the other portions of the submission without additional objections or suggestions. To the extent those other portions of the submission suggest changes or raise objections, CalRecycle has responded to them separately. Regarding the attachment referred to as "Annotated FAQ Guide," the attachment itself is included in the rulemaking record but does not require further response because it an example of a publication the commenter presents as an example of "plain-language" guidance, not as an objection or suggested change to the regulations. Furthermore, no change to the regulations is necessary for CalRecycle to publish a similar "frequently asked questions" document to assist the public in understanding the regulations and how to apply them.

O-76: Elizabeth Esquivel (Elizabeth Esquivel)

Comment O-76-1

Csilla Richmond
SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations
Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street, MS-24B
Sacramento, CA 95812-4025

RE: CMTA Comments – SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear Csilla Richmond:

On behalf of the California Manufacturers & Technology Association (CMTA), I appreciate the opportunity to submit the following comments regarding the proposed permanent regulations for the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act ("Proposed Regulations"). While CMTA and its members appreciate efforts to address significant implementation issues and cost drivers associated with the Proposed Regulation, we remain concerned about the ability to implement them in a manner that will avoid significant compliance hurdles for producers and cost increases for consumers. The following comments seek to highlight the ongoing concerns and provide suggestions for addressing them in a more workable, cost-effective manner.

Response to O-76-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-76-2

Section 18980.1(a)(8) – Food Service Ware Definition

CMTA continues to be concerned that the current regulatory definition of "Food service ware" is unclear and will prompt retail producers not to report sales if there is a lack of clarity on which items are covered materials. By referring to the food service ware items as a "good" rather than a type of packaging associated with direct food contact, the definition removes the party filling/using the *"food service ware"* as the producer in (A). However, the definition under (B) refers to where the covered materials listed are used, which may obligate the party filling/using the food service ware. This approach creates ambiguity and inconsistency across covered materials and their obligated producer.

CMTA urges CalRecycle to provide greater clarity for compliance purposes and ensure consistency in implementation and enforcement.

Response to O-76-2

CalRecycle rejects this comment because it misinterprets the clear text of both the statute and the proposed regulations. The commenter suggests that food service ware is merely a subtype of packaging. That is an impossible statutory interpretation: Public Resources Code section 42041(e)(1) identifies two independently sufficient criteria for items to be "covered material," but the commenter's interpretation would collapse that into one (single-use packaging). Even worse, it is nonsensical to say that utensils, stirrers, and straws (each expressly identified as covered material in 42041(e)(1)(B)) are "packaging," and the commenter offers no explanation for that obvious mismatch in terms. The commenter suggests that the party "filling/using" food service ware should be the producer, which obviously was not the Legislature's intent: Every person that eats food would be a producer, as would every food truck, school cafeteria, and concession stand. The commenter is also mistaken that 42041(e)(1)(B) would draw in such parties as "producers." That subparagraph unambiguously identifies items as food service ware based on the characteristics of items themselves, so identification of the producer is not delayed until a person fills or uses them; the items are food service ware the moment they enter the supply chain in California, and there is a producer at that moment.

Comment O-76-3

Section 18980.1(a)(15) – Plastic Definition

CMTA also remains concerned that the regulatory definition of “plastic” under Section 18980.1.1 is overly broad and does not reflect how materials are recovered or how they move through the recycling system. The broad definition of “plastic,” which includes traditional plastics as well as coatings and adhesives, creates significant challenges for compliance and certification, especially for fiber-based materials. This broad scope complicates producers’ ability to accurately identify, separate, and report plastic content. The Proposed Regulations extend this definition to any component partially or fully made of plastic, unless contamination can be proven, further increasing producer responsibility. As a result, many fiber and paper products (e.g., paper packaging and food service ware) are likely to be erroneously classified as containing plastic.

To this end, CMTA recommends incorporating a weight-based or de minimis threshold within the definition of “nonplastic” or creating a separate definition for “partially made of plastic.” Establishing clear pathways for the PRO to develop and recommend de minimis standards or guidelines rather than fixing a rigid threshold in regulation.

Response to O-76-3

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comments B-30-2 and O-82-7

Comment O-76-4

Section 189.80.2.2(b) defines the criteria to meet the *de minimis* standard as “material that is part of or directly connected to packaging but is of de minimis weight or volume is not itself packaging for purposes of the act.” However, this section requires added clarity on how it applies to adhesives and coatings on packaging that are primarily composed of recycled materials.

Failure to include a specific *de minimis* threshold based on the percentage of the weight of the product or packaging could create barriers to sorting and aggregating products that are readily recyclable, if they are incorrectly included in the definition of “plastic.” Where there are industry standards on recyclability, the *de minimis* threshold in the definitions should align with those standards.

Response to O-76-4

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to B-30-2 and O-82-7. Moreover, the criteria provided in section 18980.2.2(b) apply to all materials, including all adhesives and coatings, and the commenter does not explain how their application is unclear with respect to any adhesives and coatings or why being "primarily composed of recycled materials" would have special relevance.

Comment O-76-5

Section 18980.1(a)(17) & Section 18980.1.1 – Producer & Producer Identification

The current regulatory definition of “producer” and the Producer Identification framework lack sufficient specificity to ensure predictable and consistent assignment of responsibility in complex supply chains. The definition of “producer” and the identification of the obligated producer as provided in Section 18980.1.1 are also overly broad and do not adequately define which party is the producer in the first instance. As currently drafted, they do not provide clear, operational rules for assigning producer responsibility in real-world scenarios where multiple parties may be involved in manufacturing, branding, importing, or distributing a covered material. This ambiguity creates significant uncertainty for compliance planning and risks duplicative or inconsistent obligations across supply chain actors.

We recommend making the brand owner the producer in the first instance to provide clarity and certainty to the process. Under both (1)(c) and (d): *“The designated brand or trademark shall be one used with the goods when they are first sold or distributed or used with such initial sale or distribution, regardless of where such use occurs (…).* We agree with the Foodservice Packaging Institute that there needs to be certainty as to

where the obligation occurs: when covered materials are first sold or distributed or used.

Additionally, references to “most prominently used” trademarks in subdivision (e)(3) could lead to inconsistent interpretations. CMTA recommends empowering the PRO to establish standardized guidelines for determining brand or trademark prominence. Similarly, subdivision (e)(1), which applies to plastic food service ware, should include PROdeveloped guidance to clarify brand ownership and producer identification. Language in subdivision (c) referencing where covered materials are “first sold or distributed or used” should be clarified to ensure certainty regarding the point of obligation.

Response to O-76-5

CalRecycle rejects this comment. First, the comment incorrectly suggests that CalRecycle can change the definition of "producer" via regulation. Second, the commenter appears to misread 18980.1.1(c)(1) and (d)(1), which refer to the first sale or distribution of items for the purpose of identifying the relevant brand or trademark and only concerns identification of producers for purposes of Public Resources Code section 42041(w)(1) and (2). Third, to the greatest extent permitted under statute, the proposed regulation already achieves what the commenter recommends. The commenter requests that there be "certainty as to where the obligation occurs: when covered materials are first sold or distributed or used." When the owner or exclusive licensee of the brand used with the first sale or distribution (which necessarily must happen before a product is "used"), that is exactly the effect of 18980.1.1(c)(1) and (d)(1). However, when Public Resources Code section 42041(w)(3) applies because no producer can be assigned based on the brand, the statute cannot accommodate the commenter's suggestion. That provision unambiguously requires the producer to be identified based on sale or distribution within the state, which might not be the same as when covered materials are first sold or distributed anywhere.

With regard to the phrase "most prominently used," CalRecycle disagrees with the commenter's assertion. The nature of branding ensures that the use of one brand or group of brands will be readily apparent when that "use" is considered as described in 18980.1(a)(17)(E). Moreover, designating a single brand will not necessarily require comparison of multiple brands, even when there are multiple brands associated with a product at the end the supply chain; if there is only one brand used on the product initially or with the first sale or distribution of the product, then that brand would be the designated one, regardless of its prominence relative to the other brands. Lastly, section 18980.1.1(e)(5) provides ample flexibility for the PRO to coordinate with its members to establish voluntary guidelines (based on prominence or otherwise) for how the relevant brand owners should decide which brand to designate as the one relevant under PRC section 42041(w)(1) and (2). However, no statutory provision supports assigning the PRO ultimate authority over identification of a producer.

Comment O-76-6

We also agree that, as currently drafted, the producer identification framework for food service ware ((1)(d)) appears to have been adapted directly from the framework developed for other covered materials under (1)(c). However, in the context of those other covered materials, the term “manufacturer” typically refers to the entity placing the product inside the covered material. When this same language is applied to food service ware, it seems to shift the designation of “producer” to the manufacturer of the packaging itself, rather than to the brand owner associated with the food service ware. This shift introduces an inconsistency in how producer responsibility is defined and may not align with the legislative intent of SB 54.

Response to O-76-6

Comment rejected. The commenter appears to conflate "packaging" with "food service ware" ("it seems to shift the designation of 'producer' to the manufacturer of the packaging itself"). Even if the commenter meant to refer to the "manufacturer of the food service ware itself," its objection is meritless because the statute requires manufacturers to be producers when they are the brand owner or exclusive licensee and are in the state. It is unclear how the commenter draws a distinction between the manufacturer that owns the brand and whoever else the commenter describes as "the brand owner associated with the food service ware"; they are one and the same. Even so, if the commenter intended to assert that the designated brand (and thus the brand owner identified as producer) should always be the food- or food service-related brand used on the food service ware when it is manufactured or first sold or distributed, that is the outcome guaranteed under 18980.1.1(d)(1) and (e)(1). The food- or food-service-related brand would be designated regardless of any role the manufacturer's brand or trademark has in the supply chain.

Comment O-76-7

In addition, in 18980.1.1(c), the statement “the person who manufactured the goods is the producer, provided that the person is in the state and either owns the designated brand or trademark or is licensed to manufacture the goods” creates confusion for many supply chains as to which party “manufactured” the goods. The regulations need to provide clarity to assign producer responsibility in the first instance based on real application in complex supply chains.

Response to O-76-7

Comment rejected. Without explanation, the commenter asserts that the reference to "the person who manufactured the goods" creates confusion. In any event, the "person who manufactures" is the phrase used in statute—the proposed regulation does not introduce confusion—and the verb "manufacture" has a plain, readily understood meaning.

Comment O-76-8

Additionally, the “most prominently used” standard in subdivision (e)(3) for identifying obligated brands or trademarks could lead to inconsistent interpretations. The brand owner is the party unless there is an exclusive licensee in California for the brand. To address this, it may be preferrable to grant the PRO the authority to develop standardized guidelines for determining brand or trademark prominence. Similarly, in subdivision (e)(1), which addresses food service ware (plastic food service ware), the PRO should be empowered to provide clear guidance on identifying the appropriate brand owner.

Response to O-76-8

CalRecycle rejects this comment for the reasons provided in responses to comments O-76-5 and O-55-1.

Comment O-76-9

Section 18980.1. and Section 18980.3. – Detachable Components

CMTA is concerned with additional language that was added to subparagraph (ii) of subparagraph (C) of paragraph (4) of subdivision (a) of Section 18980.1 to specify that a “detachable component” is defined by certain characteristics “regardless of whether the component is discarded attached to the other components.” Notably, this language conflicts with the Association of Plastic Recyclers’ (APR) Design Guide, which recommends leaving plastic caps on bottles and containers when recycling. As you may know, APR’s Design Guide recommends caps be attached to packaging prior to disposal because it dramatically improves recovery of these materials in the recycling stream; if caps were separated prior to disposal, they are much more likely to be lost in the sortation process. When caps are attached, material recovery facilities process and recover the caps along with the bottles, eventually sorting out and recovering differing material types where necessary through additional processing steps. The cap material is typically recyclable high-density polyethylene (HDPE) or polypropylene (PP) plastic, for which recycling collection and processing technology has improved, so reattaching caps to bottles prior to disposal optimizes recovery.

Further, consumers are urged to keep the cap on beverage containers subject to California’s Beverage Container Recycling Program for exactly these reasons. In this regard, it is unclear why it would be acceptable for beverage containers that are not in scope for this Proposed Regulation but not other types of packaging. Notably, 82.4% of California consumers indicate they recycle packaging with caps reattached to bottles.

Recycling packaging with caps helps prevent remaining product flow/odors, reduce the number of items in their bin, and match years of recycling instruction communication from organizations such as APR and How2Recycle.

Taking a position contrary to the APR Design Guide, as the Formal Proposed Regulations do, negatively impacts both the calculation of actual recycling rates for

components and the recyclability determination for components in a way that does not match current recycling practices.

Response to O-76-9

CalRecycle rejects this comment for the reasons stated in response to comment O-39-5.

Comment O-76-10

For the calculation of actual recycling rates for components, under the Formal Proposed Regulations a recycling rate is calculated using the covered material category applicable to each component standing on its own, regardless of whether the component is designed to be reattached to the primary packaging. The APR Design Guides instruct components to be reattached, and current material recovery facilities process the packaging as a whole and sort it into a single recycling stream. Understanding this guidance, a single recycling rate should be calculated for the covered material category applicable to component and the packaging to which it is reattached. To this end, CMTA aligns with our colleagues in supporting the addition of language to Section 18980.1. and Section 18980.3.2. to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.

Response to O-76-10

CalRecycle rejects this comment for the reasons provided in responses to comments O-39-5 and O-41-3

Comment O-76-11

Additionally, for recyclability determinations for components, under the Formal Proposed Regulations components that are less than 2 inches by 2 inches in size may not be considered recyclable due to their small size and current processing limitations with material recovery facilities. However, these same components are recyclable when designed to be reattached to the larger recyclable packaging, pursuant to APR Design Guides. As such, CMTA urges CalRecycle to include language in Section 18980.1 to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal. Such language should align with the APR Design Guides and actual material recovery facility practices, which requires evaluation of components in conjunction with primary packaging.

Response to O-76-11

Comment rejected. The commenter asserts that the proposed regulations impose a requirement that components must be larger than 2" by 2" to be considered recyclable. The proposed regulations contain no such standard. The commenter might have intended to refer to the covered material categories list published by CalRecycle, but that publication is not part of this formal rulemaking. CalRecycle's responses to comments O-39-5 and O-41-3 also apply

to the commenter's request that components "designed to be reattached prior to disposal" be considered together.

Comment O-76-12
Section 18980.2(a)(6) – OTC Exclusion

CMTA strongly supports paragraph (6) of subdivision (a) that provides an exclusion for over the counter (OTC) drugs and urges CalRecycle to maintain this important exclusion in the final approved regulation. As we've previously discussed, these "Medical Products," which were exempted in the statutory language of SB 54, must meet stringent Food & Drug Administration (FDA) requirements that limit the ability to use certain packaging materials, to source reduce packaging or to consider reusable packaging. OTC drugs face the same regulatory scrutiny and unique compliance challenges that prescription drugs do, and it is appropriate to exclude them.

However, CMTA is concerned that the OTC drug exclusion is unnecessarily narrowed by subparagraphs (A) and (B) that limit the exclusion to only medicines by removing OTC drugs that also make cosmetic claims, are soap, or contain sunscreen active ingredients. Notably, all FDA-regulated OTC drugs that display a "Drug Facts" panel on packaging are medical products under 21 U.S.C. 321(g) and should be exempt from SB 54 requirements. While some OTC drugs also provide secondary benefits (e.g., cosmetic, cleaning, or sunscreen) it does not alter the fact that they are OTC drugs and are considered medical products under 21 U.S.C. 321(g). These products provide consumers with important health benefits to which, without an exclusion, consumers may lose access or must buy multiple products, using more packaging, to receive the same benefits.

Without including all products that are regulated as OTC drugs by the FDA in the OTC drug exclusion, manufacturers will be forced to eliminate or upsize many affordable product options or separate consumer benefits into multiple product offerings in order to address compliance obligations including source reduction and more. To address this concern, CMTA urges CalRecycle to revise Section 18980.2(a)(6) related to Categorically Excluded Materials, as follows:

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

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

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

Response to O-76-12

CalRecycle rejects this comment for the reasons provided in response to comment B-11-3.

Comment O-76-13

Section 18980.2(c) – Exclusion for Tertiary Packaging for CRV Containers

Notably, SB 54 contemplated a number of exemptions and categorical exclusions that included packaging material for food and agriculture, medical goods, as well as beverage containers. In providing such exemptions and exclusions, exemptions for all of the exempted packaging associated with that category was referenced in Section 42041(e)(2)(A)-(G) so as to also exempt or exclude secondary and tertiary packaging associated with the primary regulated good.

CMTA urges CalRecycle to include exemptions for all secondary and tertiary packaging associated with CRV beverages as "not covered material." The final regulation should revert to the original interpretation and exclude secondary and tertiary packaging associated with containers subject to the Beverage Container Recycling Program. Given the exemptions and exclusions included throughout this section of code, the language in (E) indicates that the Legislature intended the same breadth of exclusion for beverage containers subject to California Redemption Value (CRV) as well. A narrow approach to the beverage container exclusion in SB 54 as contemplated in the Proposed Regulation would create direct conflict by forcing producers to comply with overlapping and inconsistent mandates under both the Bottle Bill and SB 54. Although "beverage container" is characterized differently as compared with 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.

Ultimately, providing a broader interpretation of the exemption helps to ensure the Legislature's priorities are addressed without upending its highly successful recycling program.

Response to O-76-13

CalRecycle rejects this comment for the reasons stated in response to comment O-91-5.

Comment O-76-14

Section 18980.2.1. – Refillable & Reusable

CMTA strongly supports the deletion of paragraphs (4) and (5) of subdivision (a) that removed from the Formal Proposed Regulations arbitrary and overly burdensome requirements. To this end, we urge CalRecycle to maintain this change and avoid applying uniform requirements to the design and labeling of reusable/refillable packaging regardless of the significant differences in packaging types and purposes across consumer product categories.

Response to O-76-14

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-76-15

Section 18980.2.2 – Exclusion of Certain Types of Packaging

Section 18980.2.2(b) provides an exclusion for treating a component as a plastic if it is of *de minimis* weight and volume, and the revised provision is helpful in referring to "small size or weight and other relevant characteristics." However, the language does not distinguish between functional polymers and trace plastics used as adhesives or coatings, which may result in the misclassification of non-plastic materials that are still recyclable or compostable resulting in excessive regulatory scope. Because it is unclear what process CalRecycle and/or the producer responsibility organization (PRO) would follow to declare a component or group of components as *de minimis*, we recommend introducing a *defined de minimis* threshold of a minimum of 5% plastic content by weight or volume for composite materials and exclude materials below this threshold from "covered material" classification.

Response to O-76-15

Comment rejected. The commenter misdescribes section 18980.2.2(b) as "provid[ing] an exclusion for treating a component as plastic." Section 18980.2.2(b) does not purport to have that effect, nor does Public Resources Code section 42041(s)(4), the statutory provision authorizing the de minimis exclusion. The effect of the de minimis exclusion is that elements of packaging that are of de minimis amounts or volumes are not considered "packaging" for purposes of the statute. The commenter appears also to claim that whether packaging components are "plastic" and whether they are "still recyclable and compostable" affect whether the components are subject to the statute. Those claims have no basis in statute.. Lastly, CalRecycle also rejects the proposal to use a percentage threshold for determining whether components are of de minimis weight or volume for the reasons provided in response to comments B-30-2.

Comment O-76-16

We appreciate the addition of (b)(3) which allows a PRO or an Independent Producer to request that CalRecycle deem certain covered material components or groups of components as *de minimis* in weight or volume.

This section does not currently list plastic food service ware alongside packaging as eligible for the outlined exclusions. We recommend using "covered materials" throughout the proposed regulations rather than listing "packaging," including in the title of this section.

Response to O-76-16

CalRecycle rejects this comment for the reasons provided in response to comment O-55-2. To the extent that the commenter suggests that the phrase "covered materials" should replace the word "packaging" throughout the regulations, CalRecycle rejects that sweeping suggestion because packaging and food service ware are inherently different items, serve different purposes, and are not equally relevant to all statutory provisions, some of which concern only one of the two types of covered material.

Comment O-76-17

Importantly, CMTA recommends delaying producer reporting requirements for these materials until the PRO establishes an approved clear classification methodology.

Response to O-76-17

Comment rejected. The commenter proposes that CalRecycle delay basic compliance obligations established in statute. CalRecycle does not have authority to delay the effectiveness of statutory obligations.

Comment O-76-18

Section 18980.2.3(a)(3(B) – Exemptions for Specific Materials with Demonstrated Recycling Rates

CMTA agrees with the American Forest & Paper Association (AF&PA) that the criteria to qualify for an exemption in Section 18980.2.3(a)(3)(B) that “after being collected, none of the items are commingled with unsorted material collected by curbside programs” is unnecessary because clean sorted material would not be combined with unsorted material during curbside collection. Rather, the regulations should align with the language from SB 54 stating, “the covered material does not undergo separation from other materials at a comingled recycling processing facility.”

Response to O-76-18

CalRecycle rejects this comment for the reasons stated in response to comment O-54-6.

Comment O-76-19

Section 18980.2.7 – Exemption Duration

CMTA appreciates the prior revisions to subdivision (g) of Section 18980.2.7 that changed the minimum duration for an approved exemption from one year to two years, providing a longer period of certainty for producers who may be granted exemptions. CMTA urges CalRecycle to preserve this change as it helps assure producers about the continued availability of an exemption for critical packaging materials. Making packaging changes and finding replacement materials can take considerable time and planning to ensure viability, safety, and consumer acceptance for new materials, often across a broad range of product categories. Producers’ certainty about whether material will be

available for use in California is necessary to make the extended producer responsibility (EPR) program in California workable. Without this, producers may be forced to remove products from the California marketplace while they find and qualify replacement packaging.

Response to O-76-19

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-76-20

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

CMTA is concerned that the restriction of covered material categories considered "recyclable" being required to meet the categorical requirements in SB 343 in Section 18980.3(a) will place significant requirements on recyclability and result in recyclable materials ending up in landfills and could even subject them to a de facto ban if they do not meet the recyclable criteria by 2032.

More specifically, CMTA is concerned that the criteria outlined in Section 18980.3.1(b) may be practically unattainable as currently drafted. Further, the inclusion of the proposed timeframe in subsection (b)(3) is not required by statute, imposing unnecessary constraints. In order to be a true and effective "on-ramp," it should be available at any time following the first Material Characterization Study.

Response to O-76-20

Comment rejected. The categorical requirements stated in 18980.3(a) are expressly mandated by statute (e.g., Pub. Resources Code section 42061(c)) and cannot be modified by regulation, and the commenter's assertion that applying statute as written will result in "recyclable materials ending up in landfills" is illogical and unexplained. The commenter might mistakenly believe that CalRecycle's authority encompasses ruling upon whether products are lawfully labeled "recyclable" or with the chasing arrows; however, the manner in which products are labeled is not relevant to whether a producer violates Public Resources Code section 42050(c). In other words, the commenter has it backwards: CalRecycle's determinations concerning recyclability are limited to assessing whether covered material can lawfully be labeled "recyclable," not whether covered material labeled "recyclable" are labeled lawfully. In other words, in assessing recyclability, CalRecycle does not issue authoritative decisions under labeling laws, which CalRecycle does not have enforcement authority over.

CalRecycle does, however, have limited authority to affect when covered materials should be considered "recyclable" for purposes of labeling laws. The

commenter does not explain why the criteria in section 18980.3.1(b) may be "practically unattainable as currently drafted" other than by pointing to the "timeframe in subsection (b)(3)." All of the criteria stated in subdivision (b) are directly linked to the express provisions in Public Resources Code section 42061(a)(3)(B), and the commenter does not allege otherwise. Regarding the timeframe in (b)(3) specifically, the commenter asserts that a "trending" designation pursuant to 42061(a)(3)(B) should be available "at any time following the first Material Characterization Study." However, the statute expressly restricts CalRecycle's identification of materials as "trending toward meeting the requirements of [42355.51(d)(2)(A) and (B)]" to "[w]hen updating information pursuant to [42355.51(d)(10(B)(ii)]." CalRecycle regulations cannot disregard that express statutory restriction.

Comment O-76-21

Finally, it is critical that the “recyclable” recycling rate be based on the weight of the covered materials sent to be recycled and not on the incoming material weight at a responsible end market. The regulatory language in Section 18980.3.2 should be clarified to reflect that the point of measurement is the weight of materials to be recycled, which is more consistent with the language of SB 54.

Response to O-76-21

Comment rejected. The statute (Public Resources Code section 42041(ab) expressly authorizes CalRecycle to adopt a "new methodology for calculating the recycling rate by regulation," and section 18980.3.2(b) presents a methodology that reasonably measures "recycling rate" as defined in statute: "the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled." Contrary to the commenter's assertion, the proposed regulation does not base recycling rate on the "incoming material weight at a responsible end market." The weight recycled is assessed based on the recycled content produced by the end market (i.e., the "ultimately recycled" material). CalRecycle declines to adopt the commenter's suggestion of a methodology based on "the weight of covered materials sent to be recycled" because the amount of the material sent to be recycled exceeds what is ultimately accepted, and even the material that is accepted, based on the specification of the material aggregation, includes some amount of contamination and incompatible materials.

Comment O-76-22

Section 18980.3.3 – Compostable Packaging

CMTA is growing increasingly concerned about the fate of compostable packaging amid the compostable packaging framework that falls short of supporting innovation in composting and addressing infrastructure limitations. Limiting compostable materials to allowable agricultural organic inputs under the requirements of the United States Department of Agriculture National Organic Program excludes compostable polymers that meet ASTM D6400 or ASTM D6868 standards and are accepted at industrial

composting facilities throughout the country and in parts of California. This unnecessarily narrows the definition and undermines market innovation in the composting space. The reference to the National Organic Program, combined with the overly broad definition of “plastic” in Section 18980.1(a) as noted above, makes for an unworkable constraint. Eliminating composting as an end-of-life option for food service ware, in particular, will result in less collection of food waste overall, contrary to the language and the intent of SB 54.

Response to O-76-22

Comment rejected. The commenter expresses concern over the requirement established in Public Resources Code section 42357(g)(1)(B) for eligibility to be labeled "compostable." That concern is directed at a statutory requirement that the proposed regulations cannot change or ignore. The statute (e.g., Public Resources Code sections 42050(b) and 42061(d)) expressly requires CalRecycle to apply that requirement.

Comment O-76-23

Section 18980.3.4. – Post Consumer Content (PCR) Credit

SB 54 specifies that the PRO may apply for a source reduction credit up to 8% through an alternative compliance formula that offers source reduction credit “on a sliding scale based on the ratio of virgin plastic to postconsumer recycled content plastic to producers who incorporate postconsumer recycled content into plastic covered material.” Paragraph (1) of subdivision (b) of Section 18980.3.4 of the Formal Proposed Regulations requires that the PRO measure the increase in absolute amount of postconsumer recycled content (PCR) used versus a 2023 baseline.

Although SB 54 requires CalRecycle to determine a 2023 baseline for purposes of measuring overall source reduction, nothing in SB 54 requires CalRecycle to adopt a 2023 baseline for purposes of determining this credit. Many producers began incorporating PCR into packaging decades ago and had already achieved significant amounts of PCR usage by 2023. Measuring producers’ absolute volume increase of PCR based on a 2023 baseline does not recognize, and in fact penalizes, the proactive sustainability efforts of producers who voluntarily took early action to incorporate PCR into plastic packaging prior to 2023. Necessarily, due to PCR already incorporated prior to 2023, the ability to incorporate more is limited.

Response to O-76-23

CalRecycle rejects this comment for the reasons provided in response to comment B-11-7.

Comment O-76-24

Section 18980.4(a)(3) – Responsible End Market Criteria

As CalRecycle can appreciate, markets for recycled materials are complex and everchanging, offering various incentives for end markets to manage incompatible materials. However, requiring entities to send incompatible materials for further processing assumes cost-effective methods of collection, sorting, and transportation, which may not always be possible or environmentally preferable.

To that end, this provision should be amended to include flexibility, allowing end markets to assess environmental impacts and opt for alternatives if sending materials for further processing would be detrimental. Alternatively, it would be helpful to receive further detail on the specific materials that meet the definition of "incompatible materials," and how and by whom the decision will be made.

Response to O-76-24

CalRecycle rejects this comment. See the response to comment O-55-4.

Comment O-76-25

With respect to the "items partially or wholly constituting plastic", the proposed regulations continue to use the undefined term "biologically decomposed" and seemingly still requires full conversion which is not possible. An alternative approach would be to include demonstration and evidence that composted covered materials are processed into final marketable compost as evidence of a responsible end market for recycled organic product, as is now drafted for *"items comprised of fiber or paper substrates."* Another approach may be to consider substituting "biological decomposition" with "disintegration," as the latter is evaluated according to ASTM standards.

Response to O-76-25

CalRecycle rejects this comment. See the responses to comments B-6-5 and O-75-12.

Comment O-76-26

Section 18980.4.1. – Physical Recycling

CMTA urges CalRecycle to restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling as it was recognized in earlier versions of the Proposed Regulation. Physical recycling enables a method to clean plastic and remove contaminants from the recycling stream in a manner that also results in significantly reduced greenhouse gas emissions compared to virgin resin. Physical processes are not chemical recycling because they maintain "plastic to plastic" recycling, as they do not chemically alter the plastic polymers or break chemical bonds but rather remove both intentionally and unintentionally added materials to vastly improve the quality of recycled plastics and produce a high-quality post-consumer recyclate (PCR). Physical processes can also be operated in tandem with mechanical processes to vastly improve the quality of output. This broadens the potential applications for recycled plastic and promotes

continued circularity in similar types of applications, helping to reduce the amount of plastic that is downcycled. Physical recycling processes do not result in significant hazardous waste production.

Response to O-76-26

CalRecycle rejects this comment for the reasons provided in response to comment B-11-8.

Comment O-76-27

Section 18980.6.7. – Malus Fees

CMTA also urges CalRecycle to add language in paragraph (i) to restrict any Proposition 65-listed chemicals in packaging that are present at levels that would expose consumers above the respective exposure levels (No Significant Risk Levels-NSRLs/Maximum Allowable Dose Levels-MADLs) established by the Office of Environmental Health Hazard Assessment (OEHHA). Importantly, Proposition 65 is an exposure-based statute that does not restrict chemicals solely based on presence at any level. Instead, Prop 65 establishes "safe harbor" levels that determine acceptable exposure limits for chemicals without significant health risks over a lifetime of exposure (NSRLs and MADLs).

As written, the Proposed Regulations are not in alignment with the Proposition 65 statute, regulations, and guidance provided by OEHHA. This creates a fundamental inconsistency between the two agencies and disregards the work OEHHA has done to establish meaningful risk-based "safe harbor" limits. Current testing and compliance systems are not set up to measure and report Proposition 65-listed chemicals at trace levels well below those established by OEHHA. Requiring the establishment of a new level of trace contaminant monitoring imposes significant costs, while such trace levels do not present any significant risk to consumer health. It also negatively impacts circularity by unduly restricting the amount of recycled content that could be incorporated into packaging, again for no benefit.

To this end, CMTA recommends including additional language in Section 18980.6.7 for eco-modulated fees and the overall fee schedule to address this concern.

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code *at levels that would expose consumers above the respective exposure levels (No Significant Risk Levels/Maximum Allowable Dose Levels) and via the route of exposure of concern established by the Office of Environmental Health Hazard Assessment.*

Response to O-76-27

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-76-28

Section 18980.8.3. – Source Reduction Adjustment

CMTA urges CalRecycle to restore the wholesale deletion of Section 18980.8.3 that removes the PRO's express ability to utilize important, common sense adjustment factors in the development of its source reduction plan. The deleted section included adjustment factors for fluctuations in economic conditions and the change in number of producers participating in the PRO plan. The restoration of this language is critical to provide for adjustments for product sales growth over time. During the negotiations on SB 54, the issue of sales growth as it related to source reduction as discussed at length with agreement that there needed to be consideration for economic growth and adjustment to protect California's vibrant economy.

To address this significant issue, CMTA recommends the addition of language as follows:

Section 18980.8.3. Source Reduction Adjustments

(a) Subject to the limitations of this section, a source reduction plan developed pursuant to subdivision (f) of section 42057 of the Public Resources Code may utilize adjustment factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO plan and must utilize adjustment factors and methods to allow producer reporting of material usage to be adjusted by units of sale to normalize for business growth over time, in each case for determining whether the PRO has met its source reduction obligation relative to the baseline established by the Department under subdivision (b) of section 42057 of the Public Resources Code.

Response to O-76-28

CalRecycle rejects this comment for the reasons set forth in response to comment B-11-6.

Comment O-76-29

Section 18980.9.1. – Source Reduction Compliance Timeline

CMTA members remain concerned about the lack of clarity regarding the reporting period for measuring compliance against the source reduction requirements. Absent such clarity, producers may not fully understand their compliance obligations much less be able to comply. The overarching issue is producers will not have the information necessary to implement source reduction compliance any earlier than calendar year 2027 as they have less than three months until January 2026 and they need far longer lead time to develop, test and implement packaging changes.

To address this issue, CMTA proposes adding language to paragraph (2) of subdivision (d) of Section 18980.9.1 to specify that source reduction requirements that are required as of January 1, 2027, 2030, and 2032, are based on producer source reduction

reporting using the measurement period of the respective calendar years of 2027, 2030, and 2032.

Response to O-76-29

CalRecycle rejects this comment, see responses to B-27-2, I-63-15, O-41-4, and 0-48-5.

Comment O-76-30

Section 18980.13.1(a) – Corrective Action Plans

This section clarifies that CalRecycle has the authority to enter into a Corrective Action Plan (CAP) agreement with a producer to resolve violations on any terms the parties mutually deem appropriate and that CalRecycle is not required to issue financial penalties. To be clear, CalRecycle is not limited in their authority to pursue a CAP as a standalone compliance mechanism. This provides the Department more flexibility to prioritize compliance as part of its enforcement policy and work with producers who are doing everything within their power to achieve this shared goal.

Response to O-76-30

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-76-31

Cost Recovery

CMTA appreciates the Department's approach to cost recovery, aligning with the intent – as reiterated to the Department by Senator Ben Allen, author of SB 54 in a letter dated October 11, 2024 – of the enacting statute. More specifically, SB 54 intended for resources from producers and cost recovery associated with implementation of SB 54's mandates to be prospective. We urge the Department to maintain this prospective approach which is consistent with the statutory intent.

CMTA and its members appreciate your consideration of these comments. If you have any questions or if you would like to discuss further, please contact Dawn Koepke with McHugh Koepke Padron at dkoepke@mchughgr.com or (916) 606-5309. Thank you.

Response to O-76-31

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

O-77: AMERIPEN Consumer Brands Association EPR Leadership Forum Sustainable Food Policy Alliance (Mark Bescher)

Comment O-77-1

Thank you for the opportunity to submit comments regarding the latest regulatory proposal from California's Department of Resources Recycling and Recovery's ("CalRecycle") implementation of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). The comments below reflect positions from the American Institute for Packaging and the Environment (AMERIPEN), Consumer Brands Association, the EPR Leadership Forum, and the Sustainable Food Policy Alliance. Our membership represents some of the most crucial stakeholders in the packaging value chain engaged in the work that CalRecycle is undertaking. We are grateful for the opportunity to comment on the formal proposed regulations for SB 54 implementation, which represent significant improvement over prior drafts. Our organizations recommend the following opportunities to support the implementation of SB 54:

Response to O-77-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-77-2

Source Reduction Baseline Should Account for Continued Growth in Consumer Demand and Economic Expansion

Issue: In EPR programs across the United States and around the world, the PRO is primarily responsible for planning and financing infrastructure improvements based on the outcomes of a needs assessment. Source reduction as a concept should be incentivized by EPR as one lever companies can deploy in improving the circularity of their plastic packaging, reflected in eco-modulated fees based on positive or negative environmental attributes of a package. Companies should be given flexibility to determine the most appropriate lever considering their product portfolios. As in recently passed EPR bills, such specificity on packaging design should be left out of statute.

The source reduction baseline continues to pose likely unachievable targets, given that the amount of packaging utilized in California is projected to increase annually. The growth in packaging is the direct result of economic growth supporting the state of California, influenced by factors such as an increasing population, an increase in ecommerce, and increasing consumer demand for convenience. These macroeconomic and societal behavior shifts are outside both the control and authority of producers obligated under SB 54.

Establishing a source reduction baseline that does not take into account the projected growth of packaging caused by external factors is punitive and saddles the regulated community with an unattainable compliance burden. Source-reduction opportunities are constrained by contamination risk, product-performance requirements, conflicting PCR-content mandates, and limited recyclability pathways. Using a static, flat baseline calculation of packaging in California as the basis for a decade-long target fails to account for significant growth in packaging driven by market demand and population growth. This will hold producers unfairly accountable for factors out of their control and sets the regulated community up to fail.

We appreciate that the regulations already recognize the Department's discretion to recalibrate the source-reduction baseline after the initial January 1, 2025, establishment. In particular, Section 18980.9(c) authorizes the Department to update the baseline using verified producer-reported supply data. We respectfully request that the Department exercise this same discretion in subsequent years to reflect actual market conditions and material flows. Absent periodic, data-driven adjustments, producers may face untenable compliance expectations potentially requiring product withdrawals, or else they will incur significant financial and reputational risk.

Solution: Restore Section 18980.8.3 (Source Reduction Adjustments) from prior drafts and explicitly provide that source reduction targets can adjust for projected growth of consumer demand for packaging materials, particularly the population increase and increase of ecommerce, in 2032. The PRO should be designated to establish the recommendation based on growth as market demand increases.

Response to O-77-2

Comment rejected. The commenter references restoring "Section 18980.8.3," but the currently proposed regulations are the only regulations relevant to this rulemaking. Without including that section for CalRecycle to consider, there is no alternative text for CalRecycle to consider. Nevertheless, CalRecycle understands the commenter to propose some method for the PRO's plan to allow adjustment of its source reduction requirements in 2032. CalRecycle declines to make such a change because it would be unnecessary and contrary to statute, which contemplates no adjustment to the requirement stated in Public Resources Code section 42057(a). Moreover, the statute does not preclude the PRO plan from having provisions accommodating growth of market demand, and the Act already has multiple provisions accounting for the problem the commenter describes. Section 42057(f)(1) requires the PRO to give credit to producers that achieved reductions from 2013 to 2022. Section 42057(g) requires the PRO to penalize producers that add new covered material and to optimize their packaging; in other words, when a producer expands its usage of covered material, statute clearly intended that the producer would face an enhanced burden. Lastly, 42057(h) is expressly directed at "ensur[ing] source reductions achieved by January 1, 2032, are not lost after [that date] while still allowing for businesses to grow." These provisions reflect a clear intent for the PRO not to have flexibility to alter how the PRO's overall source reduction will be

evaluated (i.e., neither the goal nor the calculation of source reduction can be adjusted). To the extent growth of market demand puts satisfaction of the source reduction requirement at risk, statute clearly puts the burden on the PRO to account for that risk.

Comment O-77-3

Regulations Do Not Align to Existing California Regulations & Laws

Issue: Section 18980.6.7(h) of the draft of regulations would direct the PRO to assign malus fees to producers based on the presence of chemicals listed in section 25249.8 of the Health and Safety Code, also known as Proposition 65 (Prop 65) List of Chemicals Known to Cause Cancer or Reproductive Toxicity. However, Prop 65 is an exposure-based statute and establishes "safe harbor" levels, which determine acceptable exposure limits for chemicals without significant health risks over a lifetime of exposure. As such, key oversight mechanisms in Prop 65, such as warning requirements and enforcement, are activated by exposure risk, not the mere presence of listed chemicals. As written, the SB 54 regulations do not align with the intent of the Prop 65 statute and regulations and would unfairly penalize producers for simply the presence of chemicals even if California already has deemed there is no significant risk of exposure.

Solution: We encourage CalRecycle to make the following change to the language in Section 18980.6.7(h) regarding malus fees on Prop 65 chemicals to ensure consistency with the exposure-based requirements of the relevant Health and Safety Code section: (h) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code **at levels that would expose consumers above any established exposure levels (NSRLs/MDLs) established by OEHHA.**

Response to O-77-3

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-77-4

Definition of Producer & Producer Hierarchy for Food Service Ware Products

Issue 1: We appreciate the significant improvements to the definition of producer. Various approaches to define "producer" create confusion, ambiguity and unnecessary complexity for both manufacturers/brands/licensees and the PRO in their efforts to develop the Plan required by both the legislation and the regulations. The statute clearly assigns responsibility to the manufacturer and brand owner licensee of the physical good that is packaged, rather than the producer of the packaging material. While the current draft of regulations are improved regarding their alignment with this interpretation, the language still obligates the packaging manufacturer for plastic single-use food service ware, rather than the manufacturer and brand owner/licensee that uses the plastic single-use food service ware for a food product.

Solution: Amend Section 18980.1.(a)(17)(B) as follows:
(a)(17)(B) The terms "product that uses covered material" and "product using the covered material" refer to a good that uses covered material. A good uses covered material if its packaging is covered material or if the good itself is **unfilled** plastic single-use food service ware **supplied to a final consumer pursuant to the items listed in Public Resources Code 42041(e)(1)(B)(i)** and thus constitutes covered material. Empty packaging materials not yet used by a good are not "single-use packaging" or otherwise "covered material" under the Act, such that a person is not a producer merely because they manufacture, sell, offer for sale, or distribute such materials. **Single-use food service ware, other than unfilled plastic single-use food service ware sold to a final consumer, is not "covered material" under the Act until it is used to facilitate service of prepared food or beverages for human consumption. For the purposes of this subparagraph, "consumer" means a natural person who purchases goods and services for personal use.**

Issue 2: The current definitions of food service ware can be confusing and needs clarification to distinguish it from food packaging. There are some food service ware interpretation challenges and therefore the determination of the obligated producer remains present within Section 18980.1.1. It would be preferable for the regulations to include a distinct determination for each covered material type so that it is clear what is being referred to with respect to a "good." For example, a container might be seen as both service ware and packaging depending on how it is used, which creates potential ambiguity. Without clear definitions, the provisions in the law for exemptions, compliance, and penalties could become unclear, leading to misunderstandings between different categories. It is important to explicitly define these terms to avoid confusion and ensure proper compliance with SB 54.

Solution: The regulations should instead include language that specifies how producer obligation is assigned across each of the following distinct covered material types:
1. Unfilled plastic single-use food service ware as a covered material when it is a good sold to a final consumer
2. **Plastic single-use food service ware** as a covered material when it is used to contain or facilitate service of food or beverages served to a consumer by a food service establishment
3. **Single-use packaging** as covered material when it is used to facilitate service of a consumer

Response to O-77-4

CalRecycle rejects this comment. The commenter erroneously asserts that the proposed regulation would obligate a person as a producer merely because they are the "packaging manufacturer for plastic single-use food service ware." That assertion appears to conflate "packaging" with "plastic single-use food service ware"; for the former, the manufacturer is only relevant if they manufacture the good being packaged, whereas for the latter, the good is the food service ware items themselves, so the manufacturer is only relevant it manufactured those

items. The commenter does not identify what provision of the proposed regulations would lead to a different outcome. Moreover, there is no statutory support for plastic-single-use food service ware only being covered material when it is supplied to a final consumer, nor is there statutory support for the word "consumer" only being a natural person. The commenter identifies no statutory provision on which they base these assertions.
Regarding the suggestion that the regulations create three categories of covered material (unfiled plastic single-use food service ware, plastic single-used food service ware, and single-use packaging) as a framework for how producers are to be identified, CalRecycle rejects that suggestion for the reasons stated above (the commenter is incorrect as to when food service ware is "covered material") and because it would only add complexity to the regulation. Regardless of how covered material might be assigned a certain type, the statutory definition of "producer" requires the tiered approach looking first at the manufacturer and brand, second at the brand only, and third at sale and distribution. Lastly, to the commenter asserts that CalRecycle should publish demonstrations of how regulations apply in the different settings in which plastic single-use food service ware may exist, no change is necessary because CalRecycle can do so outside of the regulatory process.

Comment O-77-5
Aggregated Reporting for Material Categories

Issue: Requiring disaggregated compliance by material type risks penalizing producers for packaging formats that currently lack scalable recycling pathways, regardless of broader efforts to reduce or redesign. Aggregating covered material categories to achieve compliance targets encourages holistic progress across an entire packaging material portfolio. This approach aligns with the statute's overarching goals of increasing the sustainability of all packaging materials, while allowing producers flexibility in innovation, managing reporting costs, and achieving compliance. For example, it will help foster advancements in recyclability and recycling of flexible materials both in California and globally.
Solution: Allow producers to have their compliance rates aggregated for all types of single-use covered material.

Response to O-77-5
Comment rejected. The statute prohibits compliance from being evaluated with respect to the aggregate of all covered material. The most obvious indication of that basic statutory feature is that section 42061(b)(1) requires publication of "recycling rates being achieved in the state for each covered material category," not a single recycling rate. Elsewhere, the statutory text repeatedly makes clear that compliance is with respect to covered material categories.
• Section 42040(b)(4) states: "[T]he Legislature acknowledges that . . . producers will be required to eliminate, redesign, or shift packaging or food service ware to a covered material category that can more efficiently meet the requirements of this chapter."

• 42051(b)(2)(A)(iii): "a covered material category that meets a 30-percent recycling rate as of January 1, 2023."
• 42051(e): "The PRO may organize itself into subcommittees . . . to ensure sufficient focus on each covered material category to better enable each category to meet the recycling rates required in subdivision (c) of Section 42050."
• 42053(d)(1): "The costs to ensure each covered material category meets the requirements of this chapter."
• 42060(a)(5)(B): "If the department determines that exempting a particular small producer . . . would hinder the ability of a type of covered material or covered material category from complying with the requirements of this chapter . . . ."
• 42060(c): "[T] he department shall publish on its internet website a list of covered material categories that are, based on available collection and processing infrastructure and recycling markets, deemed recyclable as of January 1, 2024."

Comment O-77-6

Covered Material and Covered Materials Categories

Issue: To comply with federal requirements established by USDA and FDA, the proposed regulation creates an exclusion for "packaging or packaging components used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components."

It is likely that exempted food and agricultural packaging will still flow into the same recycling waste stream as covered materials, especially for examples where the same packaging type is used for both exempt and non-exempt material categories and when primary sortation is done by the consumer. As a result, recycling facilities and haulers will still need to collect, sort, and process these exempt materials. Without additional guidance, the PRO will be viewed as responsible for covering these costs, even though the PRO is not responsible for covering costs of exempted materials.

Solution: To support accurate reimbursement formulations, we recommend that the Department develop a formula that accounts for categorically excluded materials entering the recycling stream. This would ensure the PRO only pays for the processing and recycling of covered material categories.kris

Response to O-77-6

Comment rejected. Producer responsibility plans have the burden of proposing specific reimbursement formulations that comply with the criteria in section 18980.8(g). Plans must present the manner in which costs "incurred . . . due to requirements of the Act" will be covered; those costs necessarily exclude those attributable to packaging that is not "covered material."

Comment O-77-7

Regulations of Reuse and Refill Limit Incorporation of Reuse Models

Issue: The Department has made significant improvements in the current draft, however, reuse requirements within the regulations still are not fully conducive to multiple reuse models and, as a result, limit opportunities for reuse. The Ellen MacArthur Foundation (EMF), an evidence-based research foundation for developing a circular economy, has identified four types of reuse models: refill at home, refill on the go, return from home, and return on the go.1 Extensive research on the environmental impact, efficiency, and consumer demands of each model has been conducted by EMF, industry, and other non-government organizations. This research has been translated into innovation and investment to create and implement reuse models for products and packaging materials.2 It is imperative that reuse and refill guidelines maximize the ability for these fledgling formats to develop and propagate, which will in turn facilitate source reduction.

Solution: Enable performance-based flexibility so the PRO can advance any reuse pathway that measurably reduces single-use plastic covered material by creating a limited, performance-based waiver process administered by the PRO and approved by CalRecycle.

Response to O-77-7

Comment rejected. The commenter requests that CalRecycle create a new performance-based waiver process for types of reusable material not included in the categorical exemption for reusable packaging. However, CalRecycle does not have general authority to create exemptions not established by statute, nor does it have authority to modify the criteria established for reusability in Public Resources Code section 42041(af). In any event, the proposed regulations accommodate the commenter's concerns because any packaging not within the categorical exemption for reusable packaging might qualify for other exemptions based on public health, safety, and other special compliance challenges. See, e.g., PRC section 42060(a)(3) and (4), and section 18980.2.4 of the proposed regulations. Accordingly, the proposed regulations accommodate the commenter's concerns, and no change is necessary.

Comment O-77-8

Streamlining De Minimis Determinations

We appreciate the inclusion of flexibility in the definition of "de minimis" within the proposed framework. However, we respectfully recommend that the Producer Responsibility Organization (PRO) be granted the authority to independently establish de minimis thresholds, rather than requiring prior approval from the Department. Allowing the PRO to set these thresholds will expedite the transition to more sustainable packaging solutions, such as paper-based materials, by enabling earlier implementation and reducing administrative delays.

Solution: Amend Section 18980.2.2. Exclusion of Certain Types of Packaging (b)(3) "The PRO or an Independent Producer ~~may request that the Department deem~~ **shall**

establish certain components or groups of components to be of de minimis weight or volume. **De minimis designations** ~~Requests~~ must be in writing and describe each component or group of components at issue with sufficient detail, such as its purpose, range of physical characteristics, and the types of packaging or goods with which it is conventionally used, to clearly distinguish it from other materials. **The designations** ~~request~~ must include supporting evidence and explanation establishing that the component or group of components meets the requirements of paragraph (2)."

Response to O-77-8

Comment rejected. The commenter's proposal would vest ultimate authority in the PRO and Independent Producer to unilaterally declare components to be of de minimis weight or volume. No support is given for how nullifying CalRecycle's basic authority to enforce the law is consistent with statute, especially considering the relevant statutory provision (Public Resources Code section 42041(s)(4)(A) expressly states that the exclusion is to be applied "as determined by the department."

Comment O-77-9

Finally, consistent with SB 54's objective to increase recycling, we urge CalRecycle to address misalignment with SB 343 (Truth in Labeling). SB 343 restricts use of the chasing-arrows symbol unless specific recyclability criteria are met. As a result, the materials eligible for "recyclable" labeling under SB 343 do not fully align with SB 54's covered-material framework, creating conflicting signals for producers and consumers within California and complicating multi-state commerce. To reduce confusion and improve outcomes, we respectfully request that CalRecycle:

(1) develop clear crosswalks between SB 54 covered-material categories and SB 343 recyclability determinations; (2) provide harmonized guidance and examples for on-pack claims that support SB 54 compliance without undermining SB 343; and (3) consider targeted regulatory updates or phased compliance options that better align labeling requirements with SB 54's materials-management goals.

We thank CalRecycle for its commitment to an open and transparent regulatory process. We respectfully request that the Department consider these changes to ensure the successful implementation of SB 54 and advancement of a truly circular economy in California.

Response to O-77-9

Comment rejected. Regarding SB 343, the commenter asserts that "materials eligible for 'recyclable' labeling under SB 343 do not fully align with SB 54's covered-material [sic] framework." The commenter does not explain that assertion or how the proposed regulations cause the misalignment, so CalRecycle cannot discern what "crosswalks" the commenter requests to address it. Moreover, how a product is labeled is irrelevant to CalRecycle determinations of whether covered material complies with Public Resources

Code section 42050(b) (requiring recyclability or compostability). Moreover, to the extent addressing supposed "misalignment" would simplify producers' evaluation of how to comply with both SB 54 and SB 343, the manner of doing so would be through the covered material list published by CalRecycle under Public Resources Code section 42061 and the information and studies that CalRecycle publishes pursuant to section 42355.51(d)(1). Those publications are not part of this rulemaking; CalRecycle can address the commenter's concern without revising the proposed regulations. Regarding "guidance and examples for on-pack claims," CalRecycle cannot provide guidance as to liability for label claims because CalRecycle has no enforcement authority under labeling laws. To the extent the commenter's request is that CalRecycle provide whatever "guidance and examples" it can provide, however, no change to the proposed regulations is necessary. No regulation is needed for CalRecycle to publish resources, such as frequently asked questions or demonstrative examples based on adopted regulations, that it determines will be helpful to stakeholders. Regarding "targeted regulatory updates or phased compliance options that better align labeling requirements with SB 54's materials-management goals," if that request was intended to concern future regulations, it is not a requested change to the proposed regulations. To the extent the request was intended to ask CalRecycle to adopt regulations changing labeling requirements, no change is appropriate because CalRecycle has no authority to affect labeling requirements or deem labels in compliance with the prohibition of deceptive labeling. If the commenter's request for "phased compliance options" was directed at compliance with Public Resources Code section 42050(b) instead of with deceptive labeling laws, no change is necessary because exemptions under Public Resources Code section 42060(a)(3) can include phase-in plans to address compliance challenges.

O-78: Concerned Solid Waste JPA's (David Krueger)

Comment O-78-1

The attached coalition of stakeholders, the executive directors of Solid Waste JPA’s (local governments), submits the following comments in response to the formal draft of the SB 54 regulations published on August 22, 2025.

Despite the unanticipated delays in adopting the regulations, we appreciate CalRecycle’s work to provide a robust set of regulations so that SB 54 can achieve its potential to accelerate a shift to a more circular economy for California. We also appreciate the changes CalRecycle has made that are responsive to comments that we and other local agencies have raised. We strongly support the intentions of the law to slow the flow of materials entering our communities, keeping materials in circulation through reuse and refill, and by creating packaging that is designed for recycling or composting at end of life. We also strongly support the EPR intent of the law – to shift the responsibility for the costs of collecting and processing covered materials from jurisdictions and ratepayers to the producers of the materials themselves.

Response to O-78-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-78-2

Topic #1: Funding Sources for Implementation

Chapter 3, Article 1 of SB 54 states that:

Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products.

It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations.

However, the proposed regulations lack language that specifically: 1) requires service providers to request funding from the PRO for any new costs incurred associated with the implementation of SB 54; 2) prohibits service providers from obtaining funding from local jurisdictions for any new costs incurred associated with the implementation of SB 54; 3) prohibits service providers from receiving cost reimbursements from the PRO and then also recovering those same costs from local jurisdictions ("double-dipping"); and 4) requires service providers to share with affected local jurisdictions any reduction in operational costs resulting from PRO payments. Without those protections in the regulations, the requirements of Section 42060.5 of the Public Resources Code and Article 11 of the draft regulations could become an unfunded mandate on local jurisdictions, with the costs of SB 54 ultimately being incurred by ratepayers and taxpayers instead of by the producers.

Service providers must be prohibited from obtaining or seeking to obtain reimbursements from ratepayers for costs eligible for reimbursement from the PRO, regardless of whether or not the service provider opts to seek reimbursement from the PRO. The express legislative intent is that rate payers do not bear these costs. That intent cannot be assured unless service providers are prohibited from obtaining and seeking to obtain reimbursement of eligible costs from ratepayers.

We appreciate the addition to section 18980.8 of the proposed regulations regarding reimbursable costs which requires that the PRO or Independent Producer "first" notify the local jurisdiction when costs are deemed covered for a recycling service provider. However, while this will be a helpful tool to enhance transparency, it is not a mandate or prohibition under law from including reimbursed costs in ratepayers'

rates. We believe that such a prohibition is necessary. The proposed regulations place the burden of enforcement against “double-dipping” on local jurisdictions. We believe this enforcement should be the responsibility of CalRecycle. Below we have provided suggested draft language. We request that this language or similar be incorporated into the adopted regulations in order to ensure the intent of SB 54.

• Recycling service providers shall request reimbursement from a PRO for any new costs incurred in order to comply with Section 42060.5 of the Public Resources Code.

• Recycling service providers shall not request, accept, or obtain funds from Ratepayers, taxpayers, or local jurisdictions for new costs incurred by the recycling service providers in order to comply with Section 42060.5 of the Public Resources Code.

• Recycling service providers shall share any reduction in operational costs resulting from PRO payments with the ratepayers, taxpayers, or local jurisdictions that they serve.

• If a service provider receives reimbursement from a PRO for costs incurred in order to implement Section 42060.5 of the Public Resources Code, that service provider shall not request, accept, or obtain funds from Ratepayers, taxpayers or local jurisdictions for reimbursement of the same costs for which they were reimbursed by a PRO.

• If a service provider receives funds from a PRO and also receives funds for reimbursement of those same costs from Ratepayers, taxpayers, or local jurisdictions, either before or after being reimbursed by the PRO, that service provider shall refund all such funds to the Ratepayers, taxpayers, or local jurisdictions. The Department shall enforce this requirement, shall investigate related complaints from Ratepayers, taxpayers and local jurisdictions, and may assess penalties on recycling service providers sufficient to achieve compliance.

Response to O-78-2

CalRecycle rejects this comment for the reasons provided in response to comment O-33-2.

Comment O-78-3

Topic #2: Enforcement Oversight by the Department - Section 18980.13

As discussed in our comments dated November 4, 2024, we continue to believe that penalties of up to $50,000 per item per day for violations by local jurisdictions for failure to include covered materials in their collection programs is illogical and unreasonable. **SB 54 does not authorize these penalties.** The law authorizes monetary penalties for only PROs, producers, retailers, and wholesalers. (Public Resources Code sections 42080-42084.) This is an error in the draft regulations that needs to be corrected.

References to “PRO” and “producer” appear repeatedly in sections 42080-42084 of the Public Resources Code, the SB 54 enforcement statutory provisions. There is no reference to local jurisdictions. In section 42080, “entity” is used to refer to PRO, producer, wholesaler, and retailer. When in section 42081 there is a reference to “any entity,” the statute goes on to provide a single exception for small producers, retailers, and wholesalers that are listed in section 42060(a)(5) – with no mention of an exception or extension for certain local jurisdictions or recycling service providers (as in 42060.5(b)), or rural counties/jurisdictions (as in 42060.5(c)), which one would expect to see if they were among the types of “entities” that could be penalized under that section. Producers and PROs are the only specific types of entities mentioned in section 42081. Therefore, “any entity” in section 42081, and all the enforcement provisions of that Article 5, are intended to refer only to producers, PROs, retailers, and wholesalers. There are no other enforcement provisions in the SB 54 statutes. Again, this error should be corrected.

Response to O-78-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-73-3, which is substantively the same as this comment.

Comment O-78-4

Topic #3: Categorically Excluded Materials – Section 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is “necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging….”

We appreciate the revisions made in section 18980.2(a)(2) of the current version of the draft regulations to clarify these exclusions apply only “if it is not reasonably possible to use other packaging or packaging components…” and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

We understand that this new categorical exclusion is intended to provide further clarity to statute section 42060(b), which, in summary, states that SB 54’s regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within section 18980.2.4(c)(4), under, for example, (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to

two to five years, while excluded materials are permanently removed from the law's purview. Care must be taken when excluding materials so as not to unintentionally weaken SB 54.

Recommendation:
We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Should the Department determine that section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

• Entities should be required to explain why an exemption under section 18980.2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for applying an exclusion versus an exemption, and redirect requests to a more appropriate pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):
"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines,~~ and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" because federal guidelines are not always compulsory.

• Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-78-4

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, which is substantively the same as this comment.

Comment O-78-5

We are also opposed to the addition of language that exempts packaging used for over-thecounter drugs (18980(a)(6). As we understand it, the inclusion of over-the-counter drugs into the list of categorically excluded materials conflicts with the legislature's intent when it enacted SB 54. Over-the-counter drugs already use packaging that is well-suited for source reduction, packaging material changes, and reuse and refill.

Furthermore, we strongly oppose the regulatory change that exempts the secondary and tertiary packaging of excluded materials (18980.2(b)). We believe that these changes are unnecessary and go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-78-5

CalRecycle rejects this comment for the reasons provided in responses to comments O-49-1 and O-33-6.

Comment O-78-6

Topic #4: Methodology for Recycling Rate Determination – Section 18980.3.2

For new covered material categories with a pending recycling rate, it is more rational to presume that they do NOT achieve the required recycling rate under Public Resources Code section 42050(c), rather than that they do meet the rate. Without this presumption, producers could avoid the recyclability requirements by changing to a new form of packaging every year, circumventing the law and unintentionally disadvantaging other producers. It is challenging to determine, and to meet, the recyclability requirements of SB 54, and new items should not be exempt from going through the process that all the other covered items that have met the required recycling rate have had to go through.

Response to O-78-6

Comment rejected. The commenter conflates two independent requirements of Public Resources Code section 42050. Subdivision (c) concerns recycling rates, whereas subdivision (b) concerns recyclability. Moreover, the commenter's concern is that producers might "chang[e] to a new form of packaging every year," but that concern assumes that there can be a new covered material category every year to switch to; that is not a realistic possibility. But, even if it were to happen, the commenter is nonetheless incorrect that switching to each new covered material category annually would have any effect on compliance with the recyclability requirement of Public Resources Code section 42050(b). Finally, a negative presumption while data on a new covered material category remains pending would make it impossible to establish any new covered material category without creating a serious compliance obstacle that would need to be addressed through exemptions and corrective action plans. The presumption described in 18980.3.2(f) is a far more efficient, practical approach.

Comment O-78-7

Topic #5 – Eligibility for Being Labeled "Compostable" – 18980.3.3(c)(5)

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC § 42357(g)(1)(E).)

Section 18980.3.3(c)(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste." This language is too broad. Marketing and labeling can be misleading, and are not even mentioned in PRC section 42357(g)(1)(E).

Recommendation:

A potential fix for this issue would be to simply delete the second sentence of section 18980.3.3(c)(5), as follows:

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

Response to O-78-7

Comment rejected. The commenter requests deletion of the second sentence of 18980.3.3(c)(5) because it is "too broad," but deleting it could only render the regulations less clear. Moreover, simply deleting it would leave nothing in 18980.3.3(c)(5) other than a recitation of Public Resources Code section 42357(g)(1)(E), with no clarification of how that statutory provision should be applied. Lastly, CalRecycle disagrees with the commenter's suggestion that marketing and labeling should not be considered. They are highly relevant to whether, as required by statute, that material be "designed to be associated with the recovery of desirable organic wastes."

Comment O-78-8

Topic #6: Responsible End Market for Plastic Materials

Under PRC Code section 42040 (aa) (3) **"..in order for a covered material to be considered recycled, it must be sent to a responsible end market."** For plastic

materials, under proposed regulations section 18980.4 (b) (4), ***"...the end market is the entity that first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin materials for the creation of new or reconstituted products. Such end markets include, but are not limited to, entities that create pellet."***

The proposed language above would enable the receipt of a bale of plastics at a facility capable of producing pellet from that bale to be counted as recycling – regardless of whether that pellet was ever produced and regardless of whether that plastic was actually ever recycled into a new product. As demonstrated in the SB 54 Advisory Group's report on Plastic Leakage, plastic production in 2025 continues to grow beyond the capacity for collection and recycling programs to capture and recover those materials.
Until the demand for manufacture-ready plastics exceeds the supply, accumulating bales or piles of plastics should not be counted as recycling, as there are no assurances that such stockpiled materials will actually be made into products and there is no tracking mechanism within SB 54 to assure such actual production of a recycled product at any time in the future.

This proposed regulation also creates challenges in assessment of recycling rates at responsible end markets, in that proposed regulations section 18980.4 (a) (4) (A)(i): ***"For any period, average recycling yield shall be calculated by taking the total weight of material that has been recycled and dividing it by the total weight of material that has been accepted by the end market and not sent to a responsible end market for further processing."***

For these reasons we recommend that proposed regulations section 18980.4 (b) (4) be revised as follows: ***"...the end market is the entity that first produces plastic feedstock ~~that meets the quality standards necessary to be~~ used in lieu of virgin materials for the creation of new or reconstituted products ready for sale using such plastic feedstock. Such end markets do not include, ~~but are not limited to,~~ entities that create pellet."***

Response to O-78-8

CalRecycle rejects this comment. See the response to comment O-73-8.

Comment O-78-9

Topic #7: Definition of Hazardous Waste

The regulations reference the *federal* definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. This problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds

for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

A more appropriate definition is the one already existing in Public Resources Code Section 40141, which defines “hazardous waste” for all of Division 30 of the Public Resources Code except where “the context requires otherwise.” That section defines “hazardous waste” to include, but does not limit the definition to, RCRA hazardous waste. It also cross-references Health and Safety Code 25117, which includes any wastes that meet criteria adopted by the Department of Toxic Substances Control (DTSC).

The legislature has repeatedly stated, and the courts have upheld, that “it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law” (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

Response to O-78-9

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-78-10

Topic #8: Chemical Recycling

Despite clear statutory direction to the contrary, the regulations allow a PRO to use nonmechanical recycling technologies that produce significant amounts of hazardous waste.

Public Resources Code Section 42041(aa)(5) require CalRecycle to exclude plastic recycling technologies that produce significant amounts of hazardous waste. On the contrary, Proposed Regulation Section 18980.4.1(d) seeks to allow recycling facilities to generate ANY amount of hazardous wase as long as it is handled and disposed of in compliance with an applicable permit. This clearly exceeds CalRecycle’s regulatory authority and jeopardizes implementation of the law. SB 54 clearly prohibits the ***production*** of significant amounts of hazardous waste – it does not prohibit the ***unauthorized management of significant amounts of hazardous waste*****,** as outlined in the proposed regulations. Simply stated, SB 54 is concerned with generation, not management or disposal, of hazardous waste.

The regulations also presuppose that materials will be managed domestically, where permits and laws regulate the management and disposal of hazardous waste. Foreign markets may not have hazardous waste disposal requirements commensurate with the Resource Conservation and Recovery Act. In the absence of an equivalent regulatory environment, the regulations would allow foreign chemical recycling facilities to manage hazardous wastes as ordinary trash.

To align the regulations with existing statutory law, CalRecycle must strike proposed Section 18980.4.1(d)(1)(B):

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

Thank you for your consideration of these comments.

> **Response to O-78-10**
> CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

O-79: City of Oakland (Rebecca Parnes)

Comment O-79-1

Dear CalRecycle,

This letter is in response to the formal draft of the SB 54 regulations released on August 22, 2025. We appreciate CalRecycle's responsiveness to several concerns and recommendations that were raised by local government and other stakeholders since the May 2025 draft. While we understand the need to finalize regulations given the regulatory restart, there are still several areas in the draft regulations that we believe do not fully align with the intent of the law. We offer the following comments and suggested regulatory revisions to help achieve alignment with the law's intent to accelerate progress toward circularity for packaging and foodware, protect ratepayers, and make local governments whole for costs associated with the law's implementation. Thank you for your consideration of the recommendations below.

> **Response to O-79-1**
> Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-79-2

Article 2: Covered Material and Covered Material Categories

Categorically Excluded Materials – 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] ... to prevent microbial contamination or to maintain the safety or structural integrity of packaging...."

We appreciate the revisions made in section 18980.2(a)(2) of the August 2025 (current) version of the draft regulations to clarify these exclusions only apply when "it is not reasonably possible to use other packaging or packaging components..." and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

The Department has stated this new categorical exclusion is intended to provide further clarity to statute section 42060(b) which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Recommendation: **We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and** instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Response to O-79-2

CalRecycle partially accepts and partially rejects this comment and comments O-79-3 and O-79-4 as a group, as described in response to comment I-59-2, which is substantively the same as the group of comments.

Comment O-79-3

Should the Department determine section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

- Exclusion vs. exemption rationale – Entities should be required to explain why an exemption under section 2.4 does not apply in their case, providing the statutory

basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for an exclusion vs. exemption and redirect requests to a more appropriate exemption pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A): *"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines,~~ and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."*

Note: We also recommend removing "guidelines" (as shown above), as federal guidelines are not always statutorily compelling.

Response to O-79-3

CalRecycle partially accepts and partially rejects this comment and comments O-79-2 and O-79-4 as a group, as described in response to comment I-59-2, which is substantively the same as the group of comments.

Comment O-79-4

- Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-79-4

CalRecycle partially accepts and partially rejects this comment and comments O-79-2 and O-79-3 as a group, as described in response to comment I-59-2, which is substantively the same as the group of comments.

Comment O-79-5

We are also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6), and we oppose the regulatory change that exempts secondary and tertiary packaging of exempted and excluded primary packaging

(18980(b)). We feel these changes go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-79-5

CalRecycle rejects this comment for the reasons provided in response to comments O-49-1 and O-33-6.

Comment O-79-6

Article 3: Evaluations of Covered Material and Covered Material Categories

Eligibility for Being Labeled "Compostable" – 18980.3.3

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC 42357(g)(E))

Section 18980.3.3(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste *"if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."*

This regulatory framing essentially provides that any material marketed or labeled to be composted,is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54 (if other criteria are met). The intent of section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. Section 18980.3.3(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. Further, while the SB 54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable.

Recommendation: We recommend deleting the following sentence from section 18980.3.3(5) of the draft regulations: "They must satisfy the requirement set forth in subparagraph (E) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code concerning association with the recovery of desirable organic wastes. ~~For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled,~~

~~or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."~~

Response to O-79-6

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

Comment O-79-7

Article 4 – Responsible End Markets

Alternative Recycling Technologies – 18980.4(d)

PRC section 42041(aa)(5) states that the SB 54 regulations "shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall also include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." However, section 18980.4(d)(B) in the current version of the draft regulations goes against this statutory direction and shifts the standard from the generation or production of hazardous waste to its management.

The draft regulations enable — not exclude — technologies that produce significant amounts of hazardous waste, unlawfully shifting the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and "presents an imminent and substantial risk of harm to public health or to the contamination of the environment" does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in "substantial compliance with an applicable permit" does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste.

Response to O-79-7

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-79-8

Additionally, the regulations still fail to address the statutory requirement to encourage minimization of the "generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." (The draft regulations currently only address hazardous waste generation/management.) We urge the Department to add provisions to address these critical concerns and meet the statutory directives.

Response to O-79-8

Comment rejected. The comment only makes a vague suggestion to address specified environmental and public health impacts but does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process. Moreover, for the reasons specified in response to comment O-62-1, the proposed regulations already adequately encourage recycling that minimizes such impacts, as set forth in PRC section 42041(aa)(5).

Comment O-79-9

Compostability of plastic – 18980.4(a)(4)(B)

We appreciate clarification of the use of the term "fully biologically decompose," and reference tothe ASTM D-6400 standard. We strongly support the Department's requirements for items "partially or wholly comprising plastic." Visible particles of compostable plastic in compost products hamper the marketability of those products. There is also a growing body of research showing the compostable microplastic residue has detrimental effects on plant and soil health, and potentially human health. Because of this, the City of Oakland has banned the distribution of compostable plastics in Oakland and urges CalRecycle to do the same.

Response to O-79-9

CalRecycle rejects this comment. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-79-10

Compostability of paper and fiber – 18980.4(a)(4)(C) and 18980.3(c)(4)

We support the regulatory approach to have different compostability standards for paper and fiber than for plastic. However, with the requirement for testing from an independent laboratory in section 18980.3(c)(4) removed, we are concerned the new proposed compostability standards for paper and fiber may provide a perverse incentive for bad actors to maintain vague or otherwise insufficient documentation demonstrating that the fiber truly is "wholly derived from natural resources." Some form of verification of or attestation that a product is wholly derived from natural resources should be required to be submitted to the Department.

Response to O-79-10

CalRecycle rejects this comment for the reasons provided in response to comment O-68-6.

Comment O-79-11

Article 8 – Producer Responsibility Plan Requirements

Reimbursable costs – 18980.8(g)

While we appreciate the addition to this section requiring that the PRO or Independent Producer "first" notify the local jurisdiction when costs are deemed covered for a recycling service provider this does not go far enough to protect rate payers. This will be a helpful tool to enhance transparency, however it is not a statutory prohibition from recycling service providers from including a request that rate payers cover the exact same costs reimbursed by the PRO. This section of the regulations should specifically be updated to make it against the law for recycling service providers to charge rate payers for costs reimbursed by the PRO. Relying solely on that informational tool to deter fraud and abuse will disproportionately burden local jurisdictions with policing and enforcing the exclusion of reimbursed costs from rates.

Recommendation: We strongly recommend the Department make the following addition to draft regulations section **18980.8(g)** to protect rate payers:18980.8(g) (8)(A)The PRO's notification to both the recycling service provider and jurisdiction shall make clear the value of the covered costs shall benefit the rate payers in the local jurisdiction and shall make clear that recycling service providers cannot charge rate payers for the same service for which it receives a payment from the PRO for covered costs. If the PRO payment is to reimburse past costs already included in rates paid by rate payers, the recycling service provider shall pass on the reimbursement payment as a savings or benefit to rate payers in the next future rate increase calculation.

Response to O-79-11

CalRecycle rejects this comment for the reasons stated in response to comment I-51-1.

Comment O-79-12

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Local jurisdiction requirement – 18980.11(b)

PRC section 42060.5 states "local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material" contained on the statewide recyclable / compostable list. The current draft of the regulations provides that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program ifthe local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities."

We believe that including the requirement to also transfer recyclable and compostable covered material goes beyond the statutory requirement for local jurisdictions. This framing also makes it difficult to attribute violations to the correct party, muddying the distinction of where the enforceability of a jurisdiction for a violation of this requirement ends and the point at which that responsibility transfers to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what's expected for compliance and how compliance will be determined.

Recommendation: Delete ~~"and transfers it to responsible end markets directly or to intermediate supply chain entities."~~

Response to O-79-12

CalRecycle rejects this comment for the reasons provided in response to comment I-59-7.

Comment O-79-13

Article 13: Enforcement Oversight by the Department

The draft regulations must recognize that SB 54's Enforcement Authority is limited to producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes under AB 939. Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they include the required recyclable or compostable covered materials in their programs.

We appreciate the CalRecycle team's openness to feedback and continued dialogue to ensure the final regulations will provide a foundation for successful implementation of the law.

Response to O-79-13

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-59-8, which is substantively the same as this comment.

O-80: California Strawberry Commission (Rick Tomlinson)

Comment O-80-1

The California Strawberry Commission (CSC) is writing in support of the **SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations**, as proposed on August 22, 2025 (Proposed Regulations). The CSC appreciates all the efforts made by CalRecycle to address our past comments1 and align the Proposed Regulations with the Plastic Pollution Prevention and Packaging Producer Responsibility Act (the Act).

California berry farmers remain committed to environmental sustainability and meeting the diverse needs of consumers for nutritious, affordable, and safe fruit. In fact, strawberries have become a staple food in the American diet and are the number one source of vitamin C from fresh fruit. California strawberry farms also play a vital role in supporting the global agricultural economy, positioning California as the world's fourth-largest economy, and contributing directly to local, national, and international food security. Currently, California strawberry farmers are responsible for nearly 90 percent of the strawberries produced in the U.S. and provide over 50,000 jobs, contributing directly to food and economic security.

In the 1990s, berry farmers invented the clear plastic clamshell to reduce food waste, improve transport, and enhance food safety. By the early 2000s, berry clamshells contained more than 50% recycled content. For many years, CalRecycle highlighted the berry clamshell as a success story. In fact, for nearly a decade, California berry clamshells contained the most recycled content of any food package in the nation.

Today, California berry clamshells are officially declared "recyclable" and exceed nearly all SB54 requirements. Berry farmers are sourcing new berry clamshells with recycled plastic from post-consumer clamshells to create a circular economy. We are leading by example to show how farmers are moving faster and more cost-effectively than regulations to invent and optimize the most sustainable berry package in the world.

We greatly appreciate that the Act recognized the work of berry farms as well as the unique challenges of farming when it excluded agricultural operations from being a "producer"2. Field pack is a standard practice for strawberries and other berries.

The Proposed Regulation Section 18980.1(17)(B) adds important definitions consistent with the Act. Section 18980.1(17)(C) also provides a useful definition that combined with Public Resources Code Section 42041, reaffirms and further clarifies that products in single use packaging that are exported out of California are not covered material. Section 18980.1 (17)(F) clarifies that mere transportation does not make the transporter a "producer". Likewise, Section 18980.1(17)(H) provides additional clarity to Public Resources Code Section 42041 (w)(4) for agricultural commodities that are not a "producer"2.

We acknowledge the Department for implementing the above referenced sections of the Proposed Regulations in a manner consistent with the Act's definition that berry brand owners and farming operations are not considered a "Producer" for purposes of the Act and Proposed Regulations. The economic impact of changing these definitions would be significant. Many agricultural commodities grown in California are exported from the state and must meet the legal requirements of those end markets. If the definitions were changed and did not align with the Act, the combined economic impact to California agricultural commodities would increase from millions of dollars annually, to billions of dollars and require a new Standardized Regulatory Impact Assessment (SIRA).

We also appreciate the Governor's concerns about the impact on food prices and consumers. Earlier this year, Oregon implemented an extended producer responsibility program, and the annual fees are more than what some farmers earn. In such cases, the brand owner and farmer have no choice but to pass the cost increases forward or stop selling to that state. In fact, we can confirm that some berry operations have stopped selling California strawberries to Oregon as a result of their EPR program.

The addition of Section 18980.2 now makes the regulation consistent with Chapter 3 Section 42060(b)(1) of the Act which states, *"the department shall ensure that any regulations adopted pursuant to this chapter consider guidelines and do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture and consider requirements imposed by other California state agencies."*

It is critical that the above Section is implemented into the permanent regulation, so as to avoid the real-world conflicts between state and federal requirements as well as to avoid cost increases to food. As initially stated, California berry clamshells are officially declared "recyclable" and exceed nearly all SB54 requirements. Berry farmers are sourcing new berry clamshells with recycled plastic from post-consumer clamshells to create a circular economy. We are leading by example to show how farmers are moving faster and more cost-effectively than regulations to invent and optimize the most sustainable berry package in the world.

Implementation of Section 18980.2 does NOT undermine the goals of SB54. Instead, Section 18980.2 addresses legal precedent already acknowledged in the Act that will simultaneously ensure food safety and avoid unnecessary cost increases to consumers.

The following is a summary of some of the real-world conflicts that demonstrate the importance of maintaining Section 18980.2.

1. California's SB 54 is in direct conflict with the US Food and Drug Administration's (FDA) Food Safety Modernization Act (FSMA) and other federal standards for strawberry packaging

2. Single-use fiber/paper-based packaging has higher environmental impact and higher food safety risk

3. Economic impact and impacts on disadvantaged communities (DACs)

4. Additional Considerations

1. California's SB 54 is in direct conflict with the US Food and Drug Administration's (FDA) Food Safety Modernization Act (FSMA) and other federal standards for strawberry packaging

Beginning in 2015, as a result of several food illness outbreaks, the U.S. Food and Drug Administration (FDA) developed science-based minimum standards for the safe growing, harvesting, packing, and holding of produce, meaning fruits and vegetables grown for human consumption3. The objective of the standards was to minimize the risk of serious adverse health consequences or death from consumption of contaminated produce.

In Section 112:116 of 21 CFR under "Growing, Harvesting, Packing, and Holding Activities" of the FDA rule titled Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, measures taken for food packaging and material must;

"(a) Use food-packing material that is adequate for its intended use, which includes being:

(1) Cleanable (for reuse) or designed for single use; and
(2) Unlikely to support growth or transfer of bacteria."

The current plastic clamshell complies fully with the federal standards noted above. There is currently no viable alternative to ensure "cleanable or single use" and "unlikely to support growth or transfer of bacteria". Further there is no alternative packaging that is reusable after ensuring the food contact surfaces are clean. In the next several sections, we substantiate how the current plastic PET clamshell complies with all federal standards and must be therefore excluded as a covered material under SB 54 regulations.

"Use food-packing material that is adequate for its intended use" - 21 CFR Parts 112:116 (a)

The "intended use" in this case is fresh strawberry packing, shipping and delivery for consumer food consumption. The FDA requires that packing into primary, secondary, and tertiary packaging and the transportation of that packaging be compliant with FDA code sections to ensure that the packaging, storage, and transportation prevent "adulteration" (which includes spoilage), and insanitary conditions (food contamination). FDA food safety guidelines further emphasize USDA requirements as related to microbial contamination, reduce contamination during strawberry harvesting, processing and packaging, and ensure temperature controls are maintained to reduce and slow microbial growth.

It is important to note that FDA and other federal guidance documents provide a clear, acceptable path to compliance with legally binding statutes and regulations, such as the Food Safety Modernization Act (FSMA) and other critical food safety protective

measures. These documents have been previously reviewed and deemed acceptable by the FDA to meet these underlying legal requirements. Following FDA guidance documents, in addition to adhering to the mandated rules and regulations, represents the gold standard for operational excellence and food safety requirements.

The existing thermoform plastic PET single-use clamshells for strawberries meet stringent federal guidelines by providing robust structural protection against physical damage to the fruit, facilitating rapid cooling through strategically designed venting systems to enhance shelf life of the product, and ensuring cleanliness to minimize exposure to potential contaminants including fungal growth. For example, the United States Department of Agriculture (USDA) has established specific requirements for US Grade No. 1 and Grade No. 2 strawberries4, which are the grades predominantly found in grocery stores for fresh strawberry consumption by consumers. Other grades of strawberries, which don't typically use clamshell packaging, are reserved for processing into products such as juices and fruit cups. For a strawberry to qualify as Grade No. 1, it must be “firm, not overripe or undeveloped, and which are free from mold or decay and free from damage caused by dirt, moisture, foreign matter, disease, insects, mechanical, or other means. Each strawberry has not less than three-fourths of its surface showing a pink or red color.” Minimum fruit size must be at least ¾ inch in diameter. Grade No. 2 strawberries must be “free from decay and free from serious damage caused by dirt, disease, insects, mechanical or other means. Each strawberry has not less than one-half of its surface showing a pink or red color.” Strawberry size must have a minimum diameter of ⅝ inch. The USDA's tolerances permit that no more than 10% of strawberries in a shipment may fail to meet these grade standards, and further, no more than 2% may exhibit decay. The USDA also specifies requirements for a “US Combination” which consist of packaging with Grade No. 1 and 2. These grades are established to standardize quality and facilitate efficient trade while at the same time providing a high quality and consistent product to consumers.

To meet USDA requirements, the California strawberry farmers utilizes the thermoform plastic PET clamshell packaging to provide several critical benefits that enhance fruit quality and contribute to keeping consumer prices low:

• Consumer Transparency: The clear plastic used in clamshells allows consumers to visibly inspect the quality of the strawberries before making a purchase, thereby fostering transparency and trust in food purchases.
• Rigid Structural Protection: Constructed from durable and lightweight polyethylene terephthalate (PET) and recycled polyethylene terephthalate (rPET), clamshells are designed to prevent bruising, crushing, and mechanical damage that can occur during harvesting, handling and transportation.
• Ventilation Design: The inclusion of strategically positioned sidewall, top, and bottom vents facilitates rapid cooling to between -1 and 32°C and relative humidity levels of 5095% (moisture levels) while ensuring proper air circulation thereafter. This design effectively reduces moisture buildup, which can lead to mold growth, thus preserving the quality of the strawberries and increasing shelf-life.

• Secure Closure: Clamshells feature hinged lids equipped with patented locking mechanisms (pin locks or tri-lock buttons). These closures prevent accidental opening and contamination of the fruit, ensuring that the strawberries remain in uncontaminated condition from farm to consumer.
• Stackability for Efficient Transport: The clamshells are specifically designed to fit standard cardboard trays, allowing for efficient stacking during harvesting, transportation and storage. This design not only optimizes space but also contributes to reduced greenhouse gas emissions by decreasing the fuel consumption required for transport, ultimately leading to lower costs for consumers.

The SB 54 regulations highlight the importance of lightweighting packaging over time. Thermoform plastic PET clamshells are already lightweighted to ensure the highest possible rigidity for structural integrity in the transportation of strawberries and to ensure food safety (e.g., ventilation points to avoid moisture accumulation which can lead to the development of molds). Lightweighting directly connects with transportation weight and subsequently fuel costs across the harvest and distribution supply chain. Further lightweighting of the thermoform plastic PET packaging is not possible as it will compromise USDA structural integrity standards of the package and damage the strawberries during transportation.

Consumers will not pay for damaged products which in turn will lead to increased food waste. Food waste in turn has been shown to emit methane greenhouse gases which have a global warming potential of 80 times more than carbon dioxide. The lightweighting requirements therefore in the regulations conflict directly with USDA guidelines for product quality and FDA food safety standards. The federal regulations highlight the importance of using single use packaging to ensure consumer food safety.3 The information presented relates directly to the plastic PET clamshell that is a *“food-packing material that is adequate for its intended use”* and consistent with FDA rules.

“Cleanable (for reuse) or designed for single use” - 21 CFR Parts 112:116 (a)(1)
The current plastic PET clamshell complies with federal standards because it is a packing material that is the best option for “single use”.

In the 1990s, after the development of thermoform plastic PET bottles for carbonated drinks, given their high strength and lightweighting compared to glass bottles, packaging suppliers created clear, rigid thermoformed plastic PET packaging containers for fruits and vegetables, including the current strawberry clamshell. The thermoformed PET plastic single-use clamshell, which was molded from plastic using heat and air pressure, allowed for clear transparency to see the fruit and increased consumer confidence that the product is safe. PET packaging is easily identifiable by the #1 resin code, it is a clear, durable and versatile plastic material. To ensure a reusable container for a ready to eat food item requires sanitation. Sanitization is the process of using high temperatures or high temperature water to clean and sanitize the product. Cleaning the plastic PET clamshell at high temperatures or with high temperature water would undermine the structural integrity, shape, and ability to reuse the plastic PET clamshell.

For example, glass milk bottles can go through several reuse steps since high temperature water or steam can be used to clean and sanitize the glass bottles without undermining the structural integrity of the glass bottle. For the plastic PET clamshell, the high temperature water will begin to melt the plastic and therefore undermine the structural integrity of the product to the point where its shape would change and can no longer be used for its “intended use” as defined in the FDA rule above. Therefore, any packaging must be “single use” given that no packaging material used for strawberries can be cleaned and sanitized.

Additionally, no dedicated collection and reuse program for the plastic PET clamshell currently exists to advance cleanability for reuse for several reasons. The most logical reason such a program does not exist is because consumers will not place a plastic PET clamshell in a separate collection bin amongst all the other plastic containers recycled. It is important to recognize that strawberry plastic PET clamshells are currently sorted and baled with PET carbonated bottles by several material recycling facilities. This baled material is used in the recycled content of the current plastic rPET clamshell used by farmers creating a closed-loop system for plastic PET clamshells.

“Unlikely to support growth or transfer of bacteria” - 21 CFR Parts 112:116 (a)(2)
The FDA standards state that food packaging material must not support the growth or transfer of bacteria. This rule is designed to ensure food safety and to reduce food borne illnesses. We highlight that the current plastic PET clamshell is the only packaging material that can offer the highest degree of certainty in limiting the growth and transfer of bacteria regarding this rule compared to other packaging materials.

It is well known that increased shelf life from packaging can reduce the ability of microbial bacterial growth. Plastic packaging also increases shelf life considerably. For example, plastic packaging increases shelf life for strawberries by 10 days, cucumbers by six days, and bell peppers by 16 days and can reduce food waste by 75 percent.5,6

Recent research7 has highlighted findings regarding microbial bacterial growth on various packaging materials, specifically comparing plastic PET clamshells to cardboard (paper-based) options. This study, conducted in 2023 in collaboration with strawberry farmers, academia (Clemson University), and a federal research lab (USDA Agricultural Research Services), aimed to investigate the potential for bacterial pathogens to proliferate on different packaging materials. The overarching goal was to gain insights into how these pathogens could transition through the strawberry supply chain, affecting both fields and containers based on the chosen packaging. Previous food science studies have indicated that diverse microorganisms can settle within the porous structure of corrugated cardboard, where bacterial growth may occur under suitable conditions, such as the presence of moisture. The findings from this 2023 study suggest that bacterial pathogens preferred cardboard over other materials tested. Cardboard paper-based material also resulted in the pathogen lasting up to 270 days after inoculation at significant levels. In contrast, plastic materials demonstrated the lowest and insignificant levels of bacterial growth which was only detected through 14 days.

These findings underscore the potential advantages of using plastic PET clamshells in enhancing food safety within the strawberry sector and that no other packaging material can provide the level of sanitary and food safety conditions as described in the FDA rules as the current plastic PET clamshell.

2. Single-use fiber/paper-based packaging has higher environmental impact and higher food safety risk.

For many decades, the strawberry farmers in California have been investing in sustainable packaging to address consumer concerns over plastics. In the early 2000s, packaging manufacturers incorporated recycled PET (rPET), initially sourced from recycled plastic beverage containers. One of the primary initiatives was to ensure the thermoform plastic PET packaging included rPET at certain percentages and that the plastic packaging was 100% recyclable. Currently, thermoformed PET plastic clamshells used in California are fully “recyclable” and exceed the requirements outlined in the regulations for recycling; “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.”8 A survey conducted by the CSC in 2023 indicates that the average post-consumer recycled content in strawberry clamshells is more than 50% and often as high as 61%.9

The investments included requiring manufacturers of the plastic clamshell to purchase rPET from sorted bales for the use in strawberry packaging. One strawberry producer and distributor for example, worked closely with their clamshell provider to boost their average percentage of rPET derived from thermoforms from 0% to 10% by the end of 2021. Some clamshell providers even reached 25%.10 These investments included potentially higher prices (based on rPET demand) for the clamshells without drastically increasing the price of strawberries to the consumer. With adequate recycling infrastructure for sorting at Material Recovery Facilities (MRFs) and new and expanded reclaimer markets, the plastic PET clamshell can be considered 100% sustainable packaging. The farmers have also invested in making the entire strawberry package recyclable with the addition of biaxially-oriented polypropylene (BOPP) labels which are 100% recyclable. The strawberry sector continues to engage in research and development efforts to identify non-plastic packaging options for strawberries that will ensure the USDA structural integrity and FDA food safety guidelines can be met equivalent to the plastic thermoform PET clamshells.

In 2024, the USDA Foreign Agricultural Services (FAS) funded the Sustainable Packaging Innovation lab (SPIL) with a $5 million investment. The intent of the lab, a joint venture between USDA and the International Fresh Produce Association (IFPA), is designed to fund sustainable packaging that complies with international markets. Several other nations, especially in the European Union, have initiatives to reduce plastic packaging and increase recycling. The USDA FAS is committed to ensuring that packaging is not a hinderance to international trade agreements and therefore the investments are key to advancing alternative packaging options. The investments from USDA FAS are expected to yield new findings into sustainable packaging but not at the

same time frames specified in the regulations. For example, the regulations require that packaging by 2032 should be 100% compostable. The CSC believes that this is an ambitious timeframe to innovate the current packaging to a 100% compostable product by 2032. To this specific last point, we appreciate the ability of the CSC to petition for an industry-wide exclusion based on USDA and FDA guidelines for structural integrity and food safety of strawberries produced in and distributed from California.

No environmental analysis has been completed on the environmental tradeoffs of using paper/fiber-based packaging for strawberries or fruits and vegetables, in the Programmatic Environmental Impact Report (PEIR). The CSC has determined that paper/fiber-based products are 1.5 to 2 times heavier than the currently used lightweighted thermoform PET plastic clamshell. If the entire strawberry farmers were to use paper/fiber-based packaging for the 2024 strawberry harvest alone, the CSC estimates 10,000 acres of trees will be needed and would result in almost a million tons (900,000 tons CO2e) of carbon dioxide greenhouse gas emissions that will be added to earth's atmosphere each year. According to a 2023 report by Stravens (2023), a staggering 90% of paper pulp is derived from wood, with paper production being accountable for approximately 35% of all clear-felled trees globally. In fact, paper-based packaging has emerged as the predominant source of packaging waste within the European Union, contributing to an alarming 41.1% of total waste. This shift away from plastic packaging has not come without consequences, as only half of the produced paper and board is sourced from recovered fiber, with the remainder ending up in landfills, consequently producing significant amounts of methane - a more potent greenhouse gas than carbon dioxide.11 These estimates and findings directly conflict with state mandates to reduce greenhouse gas emissions to offset climate change from every sector including agriculture. No greenhouse gas emission data has been provided in the PEIR from alternative non-plastic packaging.

The greenhouse gas emission values above do not include additional vehicle miles travelled (VMT) because of the heavier paper/fiber-based packaging. Farmers feedback to CSC noted that with the increased paper/fiber weight compared to the already lightweighted thermoform PET clamshell, trucks taking packaging to strawberry fields will result in three-times more trips. Heavier weights of paper/fiber-based packaging means increased VMT which in turn results in increased fuel costs exponentially across the supply chain. Increased fuel costs lead to potentially higher consumer prices and increased carbon dioxide greenhouse gases. No VMT analysis has been completed in the PEIR for alternative packaging in the regulations that could be successful for industries to transition towards.

These findings show that the current thermoform PET plastic clamshell is best-available technology (BAT). BAT is defined by the Organization for Economic Co-operation and Development as the "the most effective and advanced stage in the development of industrial activities and their methods of operation, designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole".12 These findings underscore the strawberry farmers strong commitment to environmental sustainability and responsible packaging initiatives.

3. Economic impact and impacts on disadvantaged communities (DACs)

The CSC is evaluating the extent of EPR programs on strawberry prices through farmers surveys and estimated calculations based on recent EPR programs that have established fees for specific packaging (e.g., Oregon).

Oregon's EPR annual fees for plastic verses paper/fiber are 18 to 25 times greater (e.g., plastic clamshell fees range $1.4 per pound (lbs) while cardboard (paper/fiber) fees are $0.08 per pound. These fees can eliminate up to 80% of a grower's profit margin when selling to Oregon. Recent analyses conducted by the CSC indicate that the anticipated packaging fees stipulated by the Producer Responsibility Organization (PRO) in Oregon could impose costs equating to approximately 3% to 4% of the total sale price for a typical pallet of strawberries. A standard pallet contains 120 trays, each holding eight one-pound packages of strawberries. Although California's specific packaging fees have yet to be disclosed, industry experts project that these fees will likely exceed those currently in place in Oregon, thereby increasing the financial strain on California producers.

The ripple effects of EPR legislation are not confined to California alone; similar initiatives are underway in states such as Maine, Minnesota, and Colorado. If several states implement comparable fee structures of 3% to 4% per pallet, the financial implications for strawberry producers could escalate dramatically, possibly resulting in a staggering cumulative increase of 30% to 40% in total packaging costs for each pallet of strawberries sold across ten states that may implement EPR laws and regulations. These costs are not absorbable by the farmers.

The surge in EPR-related costs presents a significant challenge for strawberry farmers, which is already characterized by extremely narrow profit margins. Currently, growers profit approximately 5 cents on every dollar generated from sales, while the overwhelming majority - 95 cents - is allocated back into the community and distributed among various sectors, including labor, agricultural supplies, and the ever-increasing costs of plastic rPET packaging13. The cumulative EPR costs from several states, in the absence of federal harmonization laws, will therefore either result in strawberry growers going out of business and affecting the many communities that depend on the farmers, including several DACs in the state, or lead to higher consumer prices.

Many strawberry growers operate within or close to DACs that depend heavily on these agricultural opportunities for employment and essential services, such as packing and shipping operations. As such, the mounting financial pressures stemming from increased EPR costs, along with the potential for declines in revenue from on-farm activities, could have detrimental effects not only on the farmers but also on the broader communities that rely on strawberry farmers for economic stability and job creation. For DACs that spend most of their income on food compared to non-DACs, higher food prices will impact these communities the most. The ramifications of EPR fees may

reach far beyond the field, posing risks to livelihoods and the socio-economic fabric of many communities throughout California.

Any price increases to strawberries pose a particular risk to DACs, which are disproportionately affected by food price inflation. Of the approximately 9,000 census tracts in the state, almost 2,000 are classified as disadvantaged. Research demonstrates that individuals and families within these communities allocate a significantly larger portion of their income to grocery expenditures compared to their more affluent counterparts.14 Therefore, increases in the cost of staple food items, such as strawberries, may severely limit access to nutritious food options for these populations. Strawberries, known for their nutritional value and popularity among children, underscore the importance of maintaining affordable pricing to ensure accessibility across all demographics. It is crucial to address the challenges posed by rising production and packaging costs while concurrently supporting the most vulnerable segments of the population.

Response to O-80-1

Comment rejected. No response is required because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-80-2

4. Additional Considerations

Pursuant to the Act, the department "shall consider relevant information on reduction programs and approaches in other states, localities, and nations, including, but not limited to, the European Union, India, Costa Rica, China, Chile, Canada, and international standards".15

The CSC has been closely following the developments of plastic packaging regulations elsewhere for several years now with France and Canada proposing a complete phase-out of single-use plastic packaging.

After learning more about the benefits of berry clamshells and its contributions to food safety and national food security, Canada paused the ban, and France permanently exempted 29 fruits and vegetables. Canada noted the critical role packaging plays in protecting perishable produce throughout the entire supply chain, stating, "*A much different picture emerged in relation to product protection functions. A direct correlation exists between the importance of packaging functions related to product protection and products' perishability. The increased importance of these packaging functions extends across the value chain."* France recognized that without exemptions, fruits and vegetables are at more risk of deterioration, leading to spoilage – causing food waste, environmental impacts, and food safety risks*."This French decree is an implementation of the Anti-waste and Circular Economy (Agec) law which… provides exemptions for "fruits and vegetables presenting a risk of deterioration when sold in bulk."*

Consumers, in general, have strong confidence and trust in the existing PET plastic packaging, indicating that any modifications should be approached with careful consideration. A recent consumer survey conducted by the California Strawberry Commission, which included 800 participants, revealed that the primary concerns regarding strawberry packaging are its ability to protect the fruit from damage and to preserve freshness16. Notably, these factors held more weight for consumers compared to food safety and ease of use, as indicated by the rankings of their preferences. Furthermore, the survey findings suggest that consumers show a marked preference for packaging recyclability, with response rates reflecting two to four times more emphasis on this attribute compared to other qualities, such as compostability and the use of non-plastic materials.

In summary, the CSC confirms in this letter that, other than the current thermoform plastic PET clamshell used for strawberries, there is no reasonable packaging alternative available to replace and scale-up the annual plastic PET clamshells used by the industry (88% of which leaves the state17) and at the same time comply with federal USDA and FDA regulations, rules, and guidelines. The current clamshell also meets the requirements of the Act and CalRecycle's EPR goals; cut single-use plastic packaging by 25%, recycle 65% and ensure 100% recyclable by 2032.18 These manufacturing approaches adhere to international resin codes and meet the sustainability expectations set forth by major retailers, demonstrating responsibility toward environmental conservation. Strawberry thermoformed PET plastic clamshells, therefore, are made of the most sustainable material currently available and through stewardship and participation in the California Beverage Container Recycling and Litter Reduction Act, already exceed the requirements of the Act.

In conclusion, the CSC greatly expresses its support for the recently introduced language in the formal regulations and consistency with the statutory references to federal mandates, particularly Sections 18980.2(a)(1) and (2). We want to acknowledge all the efforts of CalRecycle and the many hours of public engagement that has been spent by you and your team. Thank you for your consideration of these comments and if you have any questions or concerns, please do not hesitate to reach out to me directly at Rick@calstrawberry.org.

Response to O-80-2

Comment rejected. No response is required because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-81: Glass Packaging Institute (Scott DeFife)

Comment O-81-1

The Glass Packaging Institute appreciates the opportunity to provide comments on the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations.

GPI is the North American trade association for the glass food and beverage manufacturing companies, glass recycling processors, raw material providers and other supply chain partners within the industry. GPI and its members endeavor to work closely with local and state governments throughout the country on issues surrounding sustainability, recycling, packaging manufacturing and energy use, and our members have operations, products, and services that would be subject to the SB 54 permanent regulations.
We urge CalReycle to consider changes to the proposed regulations as follows:

Response to O-81-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-81-2

Section 18980.2.(A)(2) Categorically Excluded Materials

This section should be deleted from the regulations. The exclusions described in this section are extremely broad and may be interpreted to exclude a large proportion of all packaging sold into California. The result would be detrimental to the program given the volume of material they may exclude, undermining the intent of SB54. The large volume of potential exclusions may create an uneven playing field in which a small proportion of producers are required to pay for the operation of the statewide recycling system. We believe that the proposed rules for exemptions (such as sections 18980.2.3 and 18980.2.4) will provide sufficient pathways for materials that must also comply with US Food and Drug Administration or Department of Agriculture requirements.

Response to O-81-2

Comment partially rejected and partially accepted. CalRecycle rejects the suggestion to remove section 18980.2(a)(2) because removing it would leave the proposed regulations without a mechanism for sufficiently addressing the conflicts that must be addressed pursuant to Public Resources Code section 42060(b). For the reasons stated in response to comment I-59-2, CalRecycle also rejects the assertion that exemptions pursuant to section 18980.2.4 are appropriate for implementing Public Resources Code section 42060(b). Likewise, the commenter's suggestion that section 18980.2.3 is also a potential compliance pathway for food and agricultural packaging subject to federal requirements is misguided because that exemption only applies to packaging that has already established a sufficient recycling rate through a non-residential collection service (it concerns recycling rates beginning in 2024).

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard

to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-81-3

Section 18980.2.4. Exemptions for Certain Covered Materials to include "producers".

In support of the previous comment, and to provide additional flexibility for exemptions, we suggest this section include "Producers" along with a PRO or an Independent Producer as entities that may submit a request for an exemption.

Response to O-81-3

Comment rejected. Statute authorizes, but does not require, CalRecycle to grant exemptions under PRC section 42060(a)(3) and (4). Rather than requiring a process for exempting producers, those provisions require CalRecycle to create a "process to identify covered material" for CalRecycle to consider exempting. Nowhere does statute state that the exemptions are to be specific to any producer. The "unique challenges" or health and safety reasons are those presented by materials themselves, not those that any certain person faces. Accordingly, for participant producers, creating a process that necessarily goes through their PRO is appropriate because the PRO is responsible for acting on producers' behalf to ensure fulfillment of statutory requirements. Notably, those requirements include achieving recycling rates for all plastic covered material, and plastic covered materials affect those rates regardless of whether they are exempt under PRC section 42060(a)(3) or (4), highlighting the importance of the PRO retaining discretion over which exemptions are consistent with, and will not prevent satisfaction of, statutory requirements.

Lastly, producers have the option to comply with their obligations and to request exemptions as Independent Producers. Accordingly, no change is necessary.

Comment O-81-4

Section 18980.2 Categorically Excluded Materials (a)(3)

We support the categorical exclusion of packaging that is "refillable" or "reusable". Reusable and refillable packaging are not "single-use" and thus should not be obligated to pay fees under the program. We encourage additional reporting requirements to ensure that reusable and refillable packaging programs are appropriately tracked and that requirements of the regulations are met. Reporting should be required of all reusable and refillable packaging, not only the reusable and refillable packaging used as a source reduction strategy.

Response to O-81-4

Comment rejected. The statute does not authorize general reporting requirements for items that are not covered material, and reusable and refillable items are, by definition, not covered material.

Comment O-81-5

Section 18980.1 Definitions (a)(10)

The definition of "Independent Producer" should be amended to say, "Independent Producer means a producer that is approved by the Department to comply with the requirements of this chapter without being a participant producer, pursuant to section 42051(b)(2)(A) of the Public Resources Code. This clarification would allow for a group of producers with the same or similar products/packaging to work collaboratively to support collection programs that enhance packaging collection and recycling in CA.

Enabling a group of producers to develop an 'Independent Producer Plan' in California would support EPR harmonization efforts in the U.S., while enhancing the amount of packaging material collected and managed by producers in California.

Response to O-81-5

Comment rejected. The text that the commenter proposes adding to would be superfluous because there is no basis other than Public Resources Code section 42051(b)(2)(A) on which CalRecycle could approve a producer to comply with the statute despite not being a participant producer. The producer offers no explanation for the contention that the change would be relevant to compliance by a "group of producers." In any event, the cited statutory provision expressly addresses compliance "individually," not collectively.

Comment O-81-6

Section 18980.5.1. Application for Independent Producer Compliance

Greater clarity is needed on whether the definition and use of the term 'Independent Producer' throughout the proposed rule is a new term and separate from the statute provision that enables a producer to comply 'Individually', thus creating a compliance pathway for a producer or group of producers to create an independent collection program. The following amendment would clarify such a compliance pathway:

(a) A producer seeking to comply with the Act without participating in a PRO shall first, if not already registered with the Department pursuant to subdivision (a) of section 18980.5, register with the Department pursuant to subdivision (a) of section 18980.10 and submit an ~~application for individual compliance~~ *application for independent producer compliance* to the Department.

Response to O-81-6

CalRecycle rejects this comment as the commenter's suggestion is unnecessary and without merit. There is no indication in the regulations that "Independent Producer" is a "new term" and separate from any statutory provisions, making

any regulatory definition of "Independ Producer" unnecessary and potentially creating confusion. Further, not only is section 42051 on the PRC referenced throughout 18980.5.1, the title section 18980.5.1 is "Application for Independent Producer Compliance". Thus, the commenter's suggested change is unnecessary and would have no substantive effect on the regulations.

O-82: AMERIPEN (Gregory Melkonian)

Comment O-82-1

Please see the attached comments on behalf of AMERIPEN. You may disregard the prior submission from AMERIPEN. Thank you.

Response to O-82-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-82-2

Dear California Department of Resources Recycling and Recovery,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the California Department of Resources Recycling and Recovery (“Department” or “CalRecycle”) to submit written comments during the formal rulemaking comment period for the proposed permanent regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (“SB 54”) released by CalRecycle on August 22, 2025. AMERIPEN respectfully submits these written comments for CalRecycle’s consideration when finalizing the proposed regulations.

AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. As the leading voice for packaging policy in the United States, AMERIPEN collaborates with legislators, regulators, and stakeholders to develop science-based, data-driven solutions that enhance the role of packaging in product protection and circularity. We have several member companies with a significant presence in California, as well as many more that import packaging materials and products into the state. The packaging industry supports nearly 156,000 jobs and generates $49 billion in total economic output in California.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values, and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

AMERIPEN greatly appreciates CalRecycle's time and effort in sharing various drafts of the SB 54 regulations with the public after the initial rulemaking period. AMERIPEN also acknowledges that the Department has made significant progress in controlling the administrative costs of the program while preserving the intent of the law to foster a circular economy for packaging, but there are still concerns about some of the remaining contents.

The below written comments and clarifying questions from AMERIPEN speak to the contents of the proposed regulations shared by the Department on August 22, 2025. They are ordered by rule section.

Response to O-82-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-82-3

CHAPTER 11.1 PLASTIC POLLUTION PREVENTION AND PACKAGING PRODUCER RESPONSIBILITY

Article 1: Definitions

§ 18980.1. Definitions

Subparagraph (a)(4) provides a definition for "component." Subdivision (A) states that a covered material component is, among other things, "a covered material item that has no physically distinct subparts." "Physically distinct" and "subparts" are undefined terms that will require producers to subjectively interpret their meaning and potential compliance. AMERIPEN would appreciate greater clarity in this terminology and suggests at a minimum modifying the language as follows to further delineate components: "item that **cannot be separated into** ~~has no~~ physically distinct subparts[…]." Relatedly, during a regulatory workshop in 2023, CalRecycle proposed defining "separable," as used in the definition of "plastic component" in SB 54, but that definition was not included in these proposed regulations. AMERIPEN recommends

defining “separable” in the regulations as “designed by the producer to be detachable by the consumer upon use.” Finally, AMERIPEN appreciated the previous modifications made to subdivision (C), which help clarify the nature of a “detachable component,” but asks the Department what the purpose of the word “materials” serves.

Response to O-82-3

CalRecycle rejects the commenter's proposals. Changing "has no physically distinct subparts" is not substantively different than the proposed phrasing, "cannot be separated into physically distinct subparts." In either case, the core term is "physically distinct subparts" and has a plainly understood meaning. The proposed change would also mean that groups of non-detachable components would necessarily be considered single components; the result would be that there would be "components" within other components, rendering it conceptually impossible to identify or quantify components. Regarding the proposed definition of "separable," that definition would serve no purpose because that word is not used in the proposed regulations other than within 18980.1(a)(4)(E), which defines the phrase "separable and distinct material component" for the purpose of clarifying statute (Public Resources Code section 42041(s)). In that context, that phrase is used to explain that "packaging" is "separable and distinct" from the good being packaged; the phrase is not related to the separability of packaging subparts. Lastly, the commenter impliedly suggests that the word "material" should be removed from 18980.1(a)(4)(C). Mentioning "material" is necessary, as a technical matter, because referencing "component" would, by definition, only refer to "packaging," and that term is subject to nuanced exclusions. Referring more generally to "material" avoids the problem that certain materials are not "packaging" and therefore technically not "components."

Comment O-82-4

Subparagraph (a)(4) also provides two different tests for determining whether a component is a “detachable component.” One test is based on design and one is based on detachment by a consumer. The SB 54 25% source reduction mandate requires reduction by weight and by plastic component for covered materials. AMERIPEN would appreciate the Department clarifying whether one or both tests for “detachable component” will be applied to measure source reduction, or whether the Producer Responsibility Organization (PRO) will be given flexibility to determine any application of the tests.

Response to O-82-4

Comment rejected. No revision is necessary because nothing in the proposed regulations suggests that either of the clauses within 18980.1(a)(4)(C) may be ignored in any context for determining what constitutes a "detachable component." Clauses (i) and (ii) are unambiguously presented as independent conditions, either of which is sufficient (along with subparagraph (C) itself) to render a component "detachable."

Comment O-82-5

Language was added to subdivision (C) of paragraph (4) of subdivision (a) to specify that a "detachable component" is defined by certain characteristics "regardless of whether the component is discarded attached to the other components." This new language negatively impacts the recyclability determination for components that are made of recyclable material but that are less than two inches by two inches in size. These materials would not currently be considered recyclable on their own due to their size but would be considered recyclable when reattached to the larger recyclable packaging (e.g., a cap replaced on a bottle). The regulations should adhere to the Association of Plastic Recyclers (APR) Design Guides, which require evaluation of attachments in conjunction with primary packaging. They should also ensure a package that would be fully capable of being recycled is considered recyclable. To help ensure that components made of recyclable materials that are reattached to a recyclable packaging do not impact the recyclability of the packaging, AMERIPEN recommends modifying subdivision (a)(4)(C) as follows: "A 'detachable component' is one that may be completely detached from all other components or material**, is not designed to be reattached before disposal,** and is either of the following:".

Response to O-82-5

CalRecycle rejects the suggested change for the reasons stated in response to comment O-39-5 and O-41-3.

Comment O-82-6

By treating "food service ware" as a "good" rather than a type of packaging used in food service environments, per the proposed definition in paragraph (8), the draft rules do not consider that food service ware is intended to be used in conjunction with an underlying product (i.e., food). As a result, the definition appears to exclude the party filling or using the "food service ware" from responsibility, whereas the definition for "packaging" still assigns responsibility to the party using (or filling) the package for its products.

Also, the definition of "food service ware" must be considered in conjunction with the proposed definition of "producer" to recognize additional implications. The proposed definition of "producer" includes the following language: "A good uses covered material if its packaging is covered material or if the good itself is plastic single-use food service ware and thus constitutes covered material." This further removes the connection between the food service operator and the operator's use of "food service ware." Additionally, in so doing, the "producer" definition appears to expand the scope of covered materials to include "packaging-like products" that are supplied or sold to consumers empty; this would create a disparity in the treatment between packaging and plastic food service ware.

Thus, the proposed approach to defining "food service ware" does not allow for a level playing field across all producers and introduces ambiguity as to the obligated party for these covered materials. The intent of SB 54 is to first obligate the brand owner "who manufactures a product that uses covered material"1 (e.g., food service ware), as that

person ultimately specifies its design and service, rather than to obligate the manufacturer of the food service ware (if a different person).

Subdivision (a)(8)(A) identifies types of "food service ware" and states that those types include "other goods typically used with food, provided that such goods are intended or marketed to be used, or are customarily used, in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption." "Other goods typically used with food," "intended," and "customarily used" are very subjective, again forcing producers to make judgement calls on terms whose meaning can vary from person to person. AMERIPEN recommends striking "intended or marketed to be used, or are customarily," as this is not a readily discernible standard and "customarily used" is not something in the control of the producer. Furthermore, striking it would align with the last sentence of the subdivision, which AMERIPEN supports. AMERIPEN does support the addition of clarifying language to this subdivision in this draft, specifically as contained in "[…] act of consuming […] put to such use."

Several of the issues raised above for this definition may be addressed by instead defining "food service ware" as follows:

(8) "Food service ware" means ~~the goods~~ **covered material** identified in subparagraphs (A) and (B) **that are added at the point of sale by food service, or other service entities, to serve, store, handle, protect, or market food and facilitate the consumption of prepared food.** Plastic singleuse food service ware […]

(A) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, and other ~~goods~~**items** typically used with food, provided that such ~~goods~~ **covered materials** are ~~intended or marketed to be~~ used~~, or are customarily used,~~ in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption."

Response to O-82-6

Comment rejected. CalRecycle declines to make the proposed changes for the reasons provided in response to comment O-55-1, which proposes substantively similar changes.

Comment O-82-7

Subparagraph (a)(15) defines "plastic," in reference to a component, to mean "the component or object contains or is made partially or entirely of plastic[…]." The continued use of the phrase "made partially" in the existing statutory definition and the proposed regulation is very subjective and open to divergent interpretations. The proposed definition would encompass all multi-material packaging components made of any amount of plastic (no matter how little). This is inconsistent with how the recycling industry classifies, treats, and manages such materials. For some of these materials, like polycoated paperboard, processing facilities recognize that a small amount of plastic will come along with the primary material and is not a barrier to recycling. In

addition, the statutory intent is unlikely to be met if a material like this were treated as a plastic and subject to the source reduction requirements, as reductions to the non-plastic portion would appear as a plastic reduction. Moreover, the sentence at the end of this subparagraph reinforces that it is possible to distinguish the non-plastic content of a component from the plastic content. Absent restricting the definition to only a single piece of covered material made entirely of plastic, AMERIPEN strongly encourages CalRecycle to specify in a revised definition that “made partially” means the component is comprised of a specific amount of plastic (e.g., at least 20% by weight).

Response to O-82-7

Comment rejected. CalRecycle's regulations cannot establish a definition of "plastic" that diverges from the statute's definition of that term. CalRecycle also rejects the comment's assertion that "made partially or entirely of plastic" is subjective. That phrase unambiguously refers to material that contains any amount of plastic and is a direct application of Public Resources Code section 42041(u), which defines "plastic component" as any component "made partially or entirely of plastic." Moreover, to the extent that considering such material to be "plastic" is unreasonable because of contamination, the proposed regulations have been updated to exclude such contamination (section 18980.1(a)(15)).

Comment O-82-8

AMERIPEN requests the addition of clarifying language to the “producer” definition in subparagraph (a)(17) providing that, **“A manufacturer of a component is not considered a producer for that component solely for reason of manufacturing that component.”** This will avoid misconstruing the definition of “producer” under SB 54 and these proposed rules as applying to a manufacturer of packaging components whose products are subsequently used in packaging by another entity that is the appropriate “producer” of covered material. Additionally, neither SB 54 nor the proposed regulations provide explicit guidance regarding producer responsibility for transactions involving covered material over the internet (i.e., “e-commerce”). This language would help producers, e-commerce platforms, and shippers clearly understand their respective obligations under SB 54. Other states with packaging extended producer responsibility (EPR) requirements provide such guidance, whether through statutory language or via rulemaking. AMERIPEN suggests that the Department consult the framework in paragraph (b) of the “producer” definition implemented in Colorado’s adopted EPR regulations2 as a potential source for clarifying e-commerce “producer” duties.

Response to O-82-8

Comment rejected. The proposed addition to the definition of "producer" regarding component manufacturers is unnecessary because it would not change the effect of the regulations. Materials are only "packaging" when they are used with a good, and any material that is not "packaging" (or food service ware) is not covered material and has no producer. Moreover, which person manufactured packaging is irrelevant to identifying the packaging's producer:

PRC section 42041(w)(1) concerns the manufacturer of the good that is packaged, not the manufacturer of packaging itself.

Comment O-82-9

AMERIPEN appreciates the addition of the sentence in subparagraph (a)(17)(B) specifying that empty packaging materials are not covered material, as it is a logical clarification. However, SB 54's definition of "covered material" encompasses plastic food service ware, as opposed to all food service ware. Furthermore, for reasons stated above regarding the definition of "food service ware," the sentence treating packaging and food service ware differently should be removed. As such, AMERIPEN recommends amending subdivision (a)(17)(B) to add corresponding clarification for food service ware as follows: "[…] ~~A good uses covered material if its packaging is covered material or if the good itself is plastic single-use food service ware and thus constitutes covered material.~~ Empty packaging materials not yet used by a good are not 'single-use packaging' or otherwise 'covered material' under the Act, **and non-plastic food service ware that is not packaging is not 'covered material' under the Act,** such that a person is not a producer merely because they manufacture, sell, offer for sale, or distribute such materials."

Response to O-82-9

Comment rejected. Adding a reference to "non-plastic" food service ware is unnecessary because there is no ambiguity as to whether such items are covered material: food service ware is only covered material if it is plastic and single-use. Additionally, the proposed sentence deletion is untenable for the reasons stated in response to comment O-76-2 and because it would leave ambiguity in the statute unresolved. Not considering plastic single-use food service ware, by itself, to be the product referred to in Public Resources Code section 42041(w) would mean that the statute would either not encompass large swaths of single-use plastic food service ware or would render every person who acquires items like utensils, plates, and straws and uses them in private a "producer." That is obviously absurd and could not have been intended.

Comment O-82-10

AMERIPEN appreciated the addition of subdivision (a)(17)(D), which clarifies that the scope of packaging that is considered "covered material" applies only to packaging associated with a product before the point of sale or distribution and before initial physical display.

AMERIPEN greatly appreciated the addition of language in subdivision (a)(17)(F)(i) excluding products and the covered materials they use that merely pass through California without reaching a user or disposal in California.

Response to O-82-10

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-11

Subdivision (a)(17)(F)(ii) provides that the “mere transportation of products (e.g., parcel or freight shipping) on behalf of another person shall be deemed conducted by that person, not the transporter.” While this provides clarity in some respects, it prompts further confusion in various scenarios. For example, who would be the producer in a situation where a brand owner manufactures a product but ships it into California at the direction of a retailer? At the very least, AMERIPEN recommends replacing “person” with “producer” in this subdivision to provide more clarity that a producer’s obligation does not transfer based on transportation.

Response to O-82-11

Comment rejected. The regulatory provision cited (section 18980.1(a)(17)(F)(ii) clarifies that the physical act of transporting a good, if conducted for hire (e.g., shipping via commercial carrier) must be ascribed to the person hiring the entity that conducted it. That provision avoids interpretations of statute under which a commercial carrier might be deemed the one distributing products. It does not, however, concern only producers, nor does it state that the act of transporting a good is necessarily "distribution" of that good. Whether shipping a product is "distribution" depends on whether it is "transferring products to another person within the supply chain." If transporting a good does not constitute transferring ownership of the product, it could not be "distribution." Moreover, if an out-of-state manufacturer sends a product to a business in the state and the brand owner is in the state, Public Resources Code section 42041(w)(2) would govern producer identification, and manufacturer could not be the producer. Even if the brand owner is not in the state, if the product is distributed or sold pursuant to an exclusive license in the state, then the licensee would be the producer. Finally, to the extent any out-of-state manufacturer or distributor or seller wishes to ensure that a brand owner or licensee is the producer, they can do so by confirming that the brand owner or licensee is "in the state," as described in section 18980.1.1(a). Regardless of where they are incorporated or reside, a company can voluntarily render itself "in the state."

Comment O-82-12

AMERIPEN greatly appreciates the deletion of the definitions of “sufficiently durable,” “washable,” and “sufficiently washable” in subdivisions (a)(27)(C) and (a)(27)(D), as they were cumbersome and would stifle development of reusable and refillable materials.

Response to O-82-12

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-13

§ 18980.1.1. Producer Identification

Paragraph (a) outlines when a person may be considered “in the state” for purposes of SB 54. While this language is helpful in elucidating how to understand this term as it is used in statute, some uncertainty remains. AMERIPEN seeks the Department’s determination as to whether a producer would be considered as consenting to being regarded as “in the state” merely for registering with a PRO.

Response to O-82-13

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. Furthermore, the provision that provides the basis for the commenter's request for a determination is sufficiently clear and requires no further explanation.

Comment O-82-14

AMERIPEN reiterates its appreciation for the Department’s efforts to consolidate and clarify criteria for identifying obligated producers under this section. That includes some of the changes made in recent drafts of the rules, such as providing dedicated hierarchies for packaging and for plastic food service ware without substantively changing the order of obligation. However, complications still remain in some areas and further refinement is merited. One specific example is subdivision (e): it establishes standards for designating which brands or trademarks are obligated when multiple ones are present, including by pointing to the brand or trademark “most prominently used.” “Most prominently used” is an inherently subjective standard that may create differing interpretations and disputes among parties. As such, AMERIPEN recommends allowing a PRO to develop uniform guidance for determining brand and trademark prominence for products under its program.

AMERIPEN supports the flexibility afforded in subdivision (e)(5), which allows producers to voluntarily agree on designating a brand or trademark on a good for which they both have responsibility.

Response to O-82-14

CalRecycle rejects this comment for the reasons provided in responses to comments O-76-5 and O-55-1.

Comment O-82-15

Regarding subdivision (f)(1), AMERIPEN assumes and is seeking clarifying language under this subdivision to confirm that if a franchisee adds transport or tertiary packaging to covered material items within the supply chain, that franchisee would be the responsible producer for those added covered material items.

Response to O-82-15

Comment rejected. No clarification is necessary because whether a business in the supply chain is a franchisee is relevant is addressed in section 18980.1.1(c)(3) and (d)(3). The commenter does not explain how a business's status as a "franchisee" might be relevant to whether adding transport or tertiary

packaging would render the business a "producer," especially considering subdivision (f) only applies when no producer can be identified based on the packaged good's brand or trademark (addressed in subdivisions (b) through (e)). Nor does the commenter explain why secondary or tertiary packaging used by a franchisee to sell, offer for sale, or distribute goods under a brand or trademark would be considered not part of the "commercial enterprise" described in Public Resources Code section 42041(w)(1) and (w)(2). The commenter might misread the meaning of subdivision (f), which only concerns identifying a producer pursuant to Public Resources Code section 42041(w)(3). Paragraphs (1) through (3) of subdivision (f) present examples of how (w)(3) applies in certain circumstances, but it does not purport to affect the identity of the producer of covered material sold or distributed under circumstances that render a person the producer under 42041(w)(1) and (w)(2).

Comment O-82-16

Subdivision (f)(2) provides that, “If there is no brand owner or licensee in the state, the person who first sells or distributes the good in the state is the producer of all covered material items, including any covered material items added by such person, used by the good at the time of such sale or distribution.” This corresponds at least partially to the third tier of the statutory “producer” definition in subdivision (w)(3) of Public Resources Code (PRC) section 42041. It is unclear how these provisions will be implemented in certain scenarios. AMERIPEN believes that the default obligated producer would be the brand owner under subdivisions (c) and (d) of this section, and AMERIPEN seeks additional clarifying language that private label manufacturers that reside in the state would not be the producer if the product’s brand owner resides outside the state. For example, a product manufacturer in California may create a private label product at the direction of and under the brand of a retailer not based in California; the manufacturer then sells/distributes that product to the retailer to be sold to consumers at one of its retail locations in California. In this example, AMERIPEN believes the responsible producer would be the brand owner that resides outside the state but directs the production and use of covered material items.

Response to O-82-16

Comment rejected. No revision is necessary because the statute and the proposed regulations clearly address the scenario when a brand owner is not in the state. That brand owner cannot be the producer under Public Resources Code section 42041(w)(1) or (w)(2); in other words, it could not be the producer by virtue of its ownership of the brand. However, in the commenter's example, where the brand owner operates retail locations in California (despite being described as "not based in California"), PRC section 42041(w)(2) would likely apply, anyway, because that business activity would likely require the businesses to have a registered agent for service of process in the state, which would place them "in the state" pursuant to section 18980.1.1(a)(1). Moreover, even if the brand owner had no physical presence in the state, the two parties could, via contract, establish that the brand owner is in the state, thus preventing the private label manufacturer from being considered the producer. See section

18980.1.1(a)(2). Lastly, the manufacturer could only be a producer due to its license to manufacture the product if that license were geographically exclusive.

Comment O-82-17

Article 2: Covered Material and Covered Material Categories

§ Section 18980.2. Categorically Excluded Materials

Subparagraph (a)(2) establishes a process for producers to determine "if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration" for food or agricultural commodity packaging. While this process may prove time- and resource-intensive, AMERIPEN is grateful that this subparagraph makes non-exhaustive reference to federal laws included in SB 54, provides an appropriate window for compliance for materials determined not eligible, and includes trade secret protections.

Subparagraph (a)(6) specifies that excluded medical products include certain drugs that do not require a prescription. In order to clarify that either of the conditions from subparagraphs (A) or (B) must be met to qualify, AMERIPEN recommends amending the subparagraph as follows: "[…] that do not require a prescription and **that do** satisfy at least one of the following criteria:".

Response to O-82-17

Comment rejected. The proposed change is non-substantive, grammatically unnecessary, and would not add clarity to the regulation, which is clear that not requiring a prescription is one necessary condition, and satisfying the condition stated in (A), the condition stated in (B), or both is a second necessary condition. No other reading of 18980.2(a)(6), as written, is reasonable.

Comment O-82-18

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

As a general note, AMERIPEN greatly appreciates the progress the Department previously made in simplifying the complexity and length of these rules governing reuse and refill. This is crucial for producers to be able to collectively increase their use of reusable and refillable materials as expected, particularly given the nascent state of this sector. AMERIPEN cautions against reinstating much of the struck provisions or imposing significant new requirements, at least for the early years of the SB 54 program, as that will inhibit growth of these formats.

Response to O-82-18

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-19

Subparagraph (a)(3)(B) requires packaging or food service ware items to be reused "for the same good without being recovered from the consumers or returned into the supply chain" to be considered "reused or refilled by a consumer." Restricting consumer reuse to the exact "same" good is unnecessarily restrictive: reusable covered material can be used for similar goods that may differ in minor ways, such as colors, flavors, or scents. AMERIPEN therefore recommends amending this provision as follows: "[…] for the same **or a similar** good […]."

Response to O-82-19

CalRecycle rejects this comment because it reflects a misreading of Public Resources Code section 42041(af)(2)(A). In contrast with 42041(af)(1)(A), which concerns producer-refilled items and expressly allows uses to be "for the same product, or for another purposeful packaging use in a supply chain," (af)(2)(A) expressly requires the uses to be "for the same product." The commenter's suggest would contravene the clear intent reflected in the difference between those two provisions.

Comment O-82-20

AMERIPEN supports the deletion of what was subdivision (a)(4), which would have established requirements for packaging or food service ware to be considered "explicitly designed and marketed to be utilized multiple times," including prescriptive labeling standards and advertising restrictions. The requirements were one-size-fits-all and did not accommodate the wide diversity of products. For example, requiring English labeling for reuse and refill instructions may limit the ability to import products. The requirements also may have disqualified reuse and refill pilot projects like the one conducted recently in Petaluma, California, which provide helpful real-world testing of consumer instructions.

Response to O-82-20

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-21

Subdivisions (a)(4)(A) and (a)(5)(A) require a convenience standard for return locations that is either the same as the location of obtainment or delivery or that is within one mile of that location. The onemile standard is impractical, particularly for communities that are rural or geographically restricted. AMERIPEN recommends allowing the PRO or Department to waive this requirement for communities where the standard is impractical.

Response to O-82-21

Comment rejected. The one-mile standard is not a requirement, but rather an alternative sufficient criterion. Where the one-mile criterion is not met, satisfying

the criterion in clause (i) (return to the same location of acquisition or delivery) is sufficient. The commenter provides no explanation for how any geographical restriction could affect satisfaction of the latter criterion. Nor does the commenter provide any alternative sufficient criterion to ensure that there is a suitable return location. When satisfying either criterion is "impractical," the inescapable conclusion is that reuse or refill itself is impractical, and packaging distributed in those circumstances must be considered covered material.

Comment O-82-22

AMERIPEN also supports the deletion of the prior version of subdivision (a)(5), which would have required packaging to be “sufficiently durable to remain usable when used multiple times over at least three years following initial use” to qualify as “designed for durability to function properly in its original conditions for multiple uses.” It could have been too restrictive and ended up prohibiting reusable materials that may be used very frequently but over a duration of less than three years, which would be counterintuitive.

AMERIPEN supports the deletion of what was subdivisions (a)(7)(A) and (a)(9)(A) in the prior draft, which would have required returning an item to the producer to “not require more time[…]than obtaining a new item.” This was far too restrictive, as a consumer can obtain a new item online easier than going back to the return/refill site.

AMERIPEN supports the changes made to what used to be subdivisions (a)(7)(B) and (a)(9)(C) to limit the provisions to remote means and to allow for alternative return options. This avoids encumbering future technologies and methods of reuse and refill (such as a third-party collection system that can collect packaging provided by individual companies). For similar reasons, AMERIPEN supports the deletion of what was subdivision (a)(7)(D) in the prior draft.

AMERIPEN is grateful for the deletion of portions of what was subdivision (a)(8)(A) in the prior draft, which would have established requirements for how often items must, on average, be used or filled by the producer before disposal. AMERIPEN was concerned that the approach in the subdivision would have unfairly penalized producers that switched from a non-plastic single use product to a reusable product with a slight amount of plastic; even though such a reusable product will facilitate greater circularity and environmental benefits, it might have been disqualified due to the presence of a slight amount of plastic. AMERIPEN also questioned what will happen if there is no “single-use version” of an item, compared to its reusable or refillable counterpart, as referenced in the former subdivision. Furthermore, the provisions in what was subdivision (a)(8)(B) would have unfairly deflated the magnitude of source reduction by arbitrarily preferring for comparison single-use products with a comparable plastic composition; such products may not be the most direct substitute for the reusable/refillable option and so may not be appropriate for comparison. Finally, this provision would have become more complicated when trying to understand how the source reduction requirements and integration of postconsumer recycled content would have interacted with it.

Response to O-82-22

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-23

§ 18980.2.2. Exclusion of Certain Types of Packaging

Subparagraph (a) provides that the Department may request producers to substantiate their claims of being exempt for materials used for long-term protection or storage. This is a supportable approach compared to a prior version, which would have used an application process, as it will save resources for the Department, producers, and consumers. However, AMERIPEN objects to the language in subdivision (a)(1) requiring an exempted good to be "one that is not ingested, irreversibly used, destroyed, or expended through its ordinary used." This approach is unnecessary, as the relevant test for eligibility under the long-term storage materials exemption is whether the packaging and associated product have a lifespan of at least five years; the product's status as diminishable is immaterial. The Department exceeded what is provided for in the plain language of SB 54 (the five-year lifespan requirement) by imposing this additional requirement that is neither specified in law nor necessary to implement the law. Therefore, AMERIPEN requests the Department to strike subdivision (a)(1).

Response to O-82-23

CalRecycle rejects this comment for the reasons provided in response to comment O-48-3. If a product is diminishable, the exclusion for long-term storage materials would drastically undermine the purpose of the statute by excluding packaging that is discarded practically immediately after acquisition.

Comment O-82-24

AMERIPEN appreciates the recent revisions made in subparagraph (b)(1), especially to add clarity in subdivision (b)(1)(B)(ii), which will help producers more readily identify when material is an "independent plastic component."

Response to O-82-24

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-25

Subdivision (b)(1)(B) introduces a definition of "independent plastic component," to make specific that term as it is used in subdivision (s)(4)(A) of PRC section 42041. SB 54 provides that an "independent plastic component" is ineligible to be treated as "[a]n element of the packaging or food service ware with a de minimis weight or volume" that would be excluded from the definition of "packaging." The statute provides little direction as to what "independent plastic component" means, but AMERIPEN believes the approach taken in the regulations is flawed. As the purpose of the exclusion is to accommodate plastic materials that do not complicate a good's recyclability, the

definition should be drafted accordingly (rather than assessing detachability and continuity). AMERIPEN recommends rewriting the definition to read as follows: "'Independent plastic component' is a packaging component, or a group of components, that wholly or partially comprises plastic and that is not recyclable."

Response to O-82-25

Comment rejected. The proposed change would not define the phrase "independent plastic component" with respect to any of its constituent words. Rather, it would effectively define the term to refer to packaging that is plastic and recyclable. That definition is wrong on its face: It would merely recapitulate the statutory meaning of the qualifier "plastic," add the qualifier "recyclable" (which has no relevance to whether a component is plastic or independent," and ignore the qualifier "independent."

Comment O-82-26

Subparagraph (b)(3) establishes a new process for a PRO or Independent Producer to request CalRecycle "deem certain components or groups of components to be of de minimis weight or volume." AMERIPEN appreciates this new provision that will increase certainty in this area of the law that is difficult to assess. However, AMERIPEN requests two amendments to improve it. First, individual producers also should be authorized to make requests under this mechanism to avoid tying up PRO time and resources processing requests. Second, AMERIPEN requests explicit clarification that use of this mechanism is not a mandatory prerequisite for claiming a material is of de minimis weight or volume; AMERIPEN's understanding from the informal regulatory workshop on May 27, 2025, was that it is an advisable but optional approach, and therefore AMERIPEN seeks clarification accordingly.

Response to O-82-26

Comment rejected. The proposed change would be inappropriate because the PRO is best positioned to evaluate whether and how (e.g., how broad the request should be) designating components as de minimis comports with the needs of its program. Regarding the PRO's time and resources, the PRO can effectively eliminate that burden because nothing in the proposed regulations precludes it from deciding that its scrutiny of requests is unnecessary, in which case its burden would be little more than to pass along requests to CalRecycle. Regarding the request for "explicit clarification" as to whether the mechanism is a mandatory prerequisite, no change is necessary because the proposed regulation does not purport to state any mandatory prerequisite for claims that a material is of de minimis weight or volume, and 18980.2.2(b)(4) even acknowledges that such a claim may be made in response to notices of violation.

Comment O-82-27

§ 18980.2.3. Exemptions for Specific Material with Demonstrated Recycling Rates

Subdivision (b)(2)(B) prohibits packaging or food service ware items from being "commingled with unsorted material collected by curbside programs." However, this does not adhere to the language in PRC section 42041(e)(2)(H)(i)(II) and may preclude them from being sent for additional processing and secondary sorting before transport to a responsible end market. AMERIPEN recommends amending this section to allow such activities by instead requiring that the information demonstrate conformance with PRC section 42041(e)(2)(H)(i)(II).

Response to O-82-27

Comment rejected. The change concerning commingled material is rejected because that provision applies the express requirement of PRC section 42041(e)(2)(H)(II) that material must not have undergone separation from other materials at a commingled recycling processing facility.

Comment O-82-28

Paragraph (c) specifies that applications under this section are public documents unless exemptions apply or the Department allows for treatment as a trade secret. AMERIPEN is deeply concerned about the risk of proprietary and sensitive market information pertaining to end markets being publicly released after being shared with the Department, as it may negatively affect the competitiveness of the market. AMERIPEN requests the addition of an option for a producer to submit their data to a third party approved by a PRO that will anonymize the data or certify that the producer is compliant with the responsible end market obligations.

Response to O-82-28

CalRecycle rejects the comment. First of all, the change is unnecessary because PRC section 40062 and the proposed regulations provide rigorous protection for allegedly confidential records. Second, the suggestion would obliterate transparency concerning compliance with the law and render CalRecycle unable to enforce the law's requirements. CalRecycle relying on representations by a third party, with no demonstration directly to CalRecycle, is plainly unreasonable because CalRecycle would have no way to evaluate the legitimacy of such a representation. This even directly contradictions express terms in statute, which requires parties' representations to be "demonstrated to the department." See PRC section 42041(e)(2)(H)(IV).

Comment O-82-29

§ 18980.2.4. Exemptions for Certain Covered Materials

Paragraphs (a) and (b) do not allow a participating producer to submit an application to exempt its covered material under this section, requiring the request to instead come from the PRO. AMERIPEN requests restoration of the authority for a participant producer to make exemption requests, as there is no guarantee that a PRO will be able to apply on the producer's behalf.

Response to O-82-29

Comment rejected. Statute authorizes, but does not require, CalRecycle to grant exemptions under PRC section 42060(a)(3) and (4). Rather than requiring a process for exempting producers, those provisions require CalRecycle to create a "process to identify covered material" for CalRecycle to consider exempting. Nowhere does statute state that the exemptions are to be specific to any producer. The "unique challenges" or health and safety reasons are those presented by materials themselves, not those that any certain person faces. Accordingly, for participant producers, creating a process that necessarily goes through their PRO is appropriate because the PRO is responsible for acting on producers' behalf to ensure fulfillment of statutory requirements. Notably, those requirements include achieving recycling rates for all plastic covered material, and plastic covered materials affect those rates regardless of whether they are exempt under PRC section 42060(a)(3) or (4), highlighting the importance of the PRO retaining discretion over which exemptions are consistent with, and will not prevent satisfaction of, statutory requirements.

Lastly, producers have the option to comply with their obligations and to request exemptions as Independent Producers. Accordingly, no change is necessary.

Comment O-82-30

Under paragraph (a), the regulations provide only a limited explicit exemption from SB 54, specifically pertaining to PRC section 42050. However, subdivisions (a)(3) and (a)(4) of PRC section 42060 allow CalRecycle to grant exemptions from the entirety of SB 54. Therefore, AMERIPEN requests replacement of language from a prior version of the regulations stating exemptions apply to “the requirements of the Act and this chapter.”

Response to O-82-30

CalRecycle rejects this comment. Under the Act, the exemptions are for covered materials, not producers, and the required exemption process is only for identifying covered materials that CalRecycle may decide to exempt. The consequences of exemptions from the entirety of SB 54 would render exemptions unjustifiable except in extreme cases, if any -- an outcome the Legislature could not reasonably have intended. In any event, revising the language to merely stating "the requirements of the Act and this chapter" would not have the effect sought; that language would have the effect now more clearly stated in the current version of the regulations. As this comment demonstrates, that phrase was ambiguous and required the clarification provided by the current language.

Comment O-82-31

The “practical necessity” of a covered material has no bearing on whether it has “unique challenges” complying with SB 54 or health or safety reasons that justify an exemption. The Department also should not be the arbiter of the “practical necessity” of any

covered material introduced into interstate commerce. Therefore, AMERIPEN recommends deletion of subparagraph (c)(4)(A)(iii).

Response to O-82-31

CalRecycle rejects this comment. For multiple reasons, the commenter is incorrect that the practical necessity of a covered material has no bearing on whether "unique challenges" for complying with the law or health or safety concerns justify an exemption.

First, exempting any material from the requirements of PRC section 42050 is a drastic action because it risks undercutting the law's effectiveness, thereby implicating CalRecycle's core mandate under the law: to adopt regulations that ensure that the law's requirements, "in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 . . . are met" (PRC section 42060(a)). Fulfilling that mandate requires CalRecycle to minimize the risk of counteracting the law's effectiveness whenever possible, including by not granting exemptions from the requirements of PRC section 42050 absent significant extenuating circumstances. In other words, the practical necessity of a covered material is an extenuating circumstance highly relevant to whether an exemption is consistent with CalRecycle's obligations under PRC section 42060(a).

Regarding the claim that CalRecycle should not be deciding whether such circumstances exist, that assertion directly contradicts statute, which expressly authorizes CalRecycle to exempt covered material and establish the process for doing so, without any limitation other than the overall mandate set forth in PRC section 42060(a).

Lastly, to the extent that the commenter implies that the mere existence of "unique challenges" in complying with the law, absent practical necessity, requires CalRecycle to grant an exemption, CalRecycle rejects that implication. Statute provides that CalRecycle "may exempt" covered material identified as presenting those challenges but does not universally require it to do so. Instead, it leaves determination of whether exemptions are appropriate to CalRecycle's discretion.

Comment O-82-32

Subparagraph (c)(4)(A)(iv) requires a party seeking an exemption based on the unique challenges of a material to identify “[p]otential alternatives to the covered material and a description of why they are infeasible or unreasonable,” as specified. This analysis is not required or even contemplated under SB 54 and is irrelevant to determining whether a certain material “presents unique challenges in complying with” SB 54. The question is whether the given material itself is associated with “unique challenges,” not whether there are alternatives. At a minimum, AMERIPEN recommends striking subparagraph (c)(4)(A)(iv).

Response to O-82-32

Comment rejected. If there are alternatives that are feasible and reasonable to adopt, that fact contradicts the assertion that a material presents a challenge to compliance. The commenter's analysis, in effect, asserts that producers have a right to continue using materials that render compliance impracticable. But nothing in statute guarantees such a right. To the contrary, at its core the commenter's assertion would have the absurd result that compliance would essentially be voluntary: A producer could avoid having to comply with the law by continuing to choose to use materials that violate it.

Comment O-82-33

Subparagraph (f)(3) requires that for an exemption for health and safety reasons or because a material is unsafe to recycle, the Department must establish both that:

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

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

However, “risks of significant effects on the environment” and whether an exemption will “make it more difficult for any other producer to satisfy the requirements of section 42050 of the Public Resources Code” do not directly factor into the statutory grounds for this exemption. As such, subparagraph (f)(3) should be revised to read as follows: “An exemption request based on section 42060(a)(4) of the Public Resources Code shall be approved if the application clearly and convincingly establishes compliance with the Act is not possible without increasing overall risks to health or safety compared to the risks posed by exempting the packaging or food service ware or because it is unsafe to recycle the packaging or food service ware.”

Response to O-82-33

Comment rejected. CalRecycle rejects the commenter's express premise that CalRecycle can only consider issues that "directly factor into the statutory grounds for this exemption." Statute places no restriction on CalRecycle's consideration of relevant factors, whether direct or indirect.

Regarding effects on the environment, the commenter may misunderstand the relevance of CalRecycle considering environmental effects: If recycling material causes risks of environmental harm, that risk would make it more likely, not less likely, that an exemption is appropriate. Regardless of that potential misunderstanding, the commenter's suggestion is rejected because effects on the environment and health and safety concerns are inextricably linked. Moreover, even if there were no link between the environment and health and safety, considering the environment would still be appropriate because, regardless of the statutory provision being implemented, statute unambiguously

requires CalRecycle to ensure that regulations "avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas." See PRC section 42060(d). Moreover, this exemption directly concerns recycling, and statute also expressly requires the regulations to encourage recycling that minimizes . . . environmental impacts. Without information about environmental effects, which often fall on such communities and areas, CalRecycle cannot fulfill that statutory mandate.

Regarding subparagraph (B), whether an exemption will affect other producers' ability to comply with the law, is a crucial requirement that the proposed regulations must include to fulfill their express purpose: to ensure that the requirements of section 42050 are met. Implementing and enforcing the law without regard to the effects on every producer other than the one applying for an exemption would violate that mandate.

Comment O-82-34

Subparagraph (g)(1) now provides that exemptions under this section last for two years by default instead of one year, except in certain circumstances. AMERIPEN supports this change because a oneyear exemption period would necessitate a significant amount of producer and Department resources, respectively, to reapply for and to review reapplications for the exemption. However, the subparagraph was also modified to cap the Department's authority to extend exemptions to five years; AMERIPEN requests removal of this clause because it is unnecessarily limiting given that the Department has oversight authority. AMERIPEN instead requests that this paragraph be modified to allow applicants to request an exemption duration longer than two years with a description of justification for doing so, and provide that CalRecycle should consider such a request and, if the longer exemption duration is not granted, provide a detailed explanation as to why. Finally, to afford the Department and PRO ample time to review and process requests, AMERIPEN encourages the Department to provide guidance regarding the forthcoming exemption application process as soon as possible so the public with enough time to understand and prepare for its implementation.

Response to O-82-34

Comment rejected. Section 18980.2.4(g)(1) strikes a reasonable balance between establishing a clear, consistent period for exemptions and the need for flexibility to account for when that limitation is unnecessary or unreasonably burdensome. The commenter objects to the upper limit of five years because CalRecycle "has oversight authority." CalRecycle having oversight authority does not eliminate the usefulness of the upper limit of five years. That limit reflects CalRecycle's assessment that it is not practicable to estimate with confidence any longer period for which an exemption's justification will persist. CalRecycle also declines to give applicant's unfettered flexibility to request a duration of longer than two years and place the burden of justifying any shorter duration on CalRecycle. That requested approach defies logic because it would allow applicants to leverage their superior access to information relevant to justifying an exemption. Regarding the encouragement for CalRecycle to "provide

guidance," no response is necessary because that is not a proposed revision to the regulatory text.

Comment O-82-35

§ 18980.2.5. Covered Material Category List Updates

A prior draft of the regulations deleted language in paragraph (a) specifying what portions of the Covered Material Category (CMC) List should be reviewed and, "if necessary," updated. Furthermore, a prior draft added language to the beginning of paragraph (b) and deleted the sentence stating, "For example, the Department shall update the list if the list, as updated, would more accurately or completely reflect how distinct material types and forms are collected or processed separately or would accurately account for novel material types and forms." AMERIPEN is concerned that removal of this language will restrict the Department's authority to make updates to the CMC List when there is significant new information about recycling that would substantively modify characterizations in the List. The Department should make timely updates to the recycling and composting designations in the CMC List to reflect changing and, under SB 54, improving recycling conditions. Furthermore, PRC section 42355.51(d)(1)(B)(iii) authorizes CalRecycle to "publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms." AMERIPEN therefore requests the Department undo the changes previously made in paragraphs (a) and (b) of this section in the December 2024 draft. Alternatively for paragraph (b), AMERIPEN recommends the Department add a final sentence stating, "At a minimum, the Department shall update the list twice annually if new information and changed circumstances warrant it."

Response to O-82-35

Comment rejected. Regarding 18980.2.5(a), CalRecycle cannot discern the proposed change because that provision does include the qualifier "if necessary." Regarding the proposed addition to subdivision (b) (the sentence beginning "For example"), CalRecycle declines to make that change because it is unnecessary and could even have an effect opposite of the one the commenter seeks. Not including an example does not imply any limitation on the scope of the regulation as written, and that scope is sufficiently clear in subdivision (b) as written. In contrast, including an example might, by providing context that was not strictly necessary, suggest an unintended narrower reading of the range of potential reasons for updating the list. Regarding suggestion that updates shall be made "twice annually if new information and changed circumstances warrant it," that addition would exceed the minimum requirements imposed under Public Resources Code section 42061(e) and (f), to which the proposed regulation refers (18980.2.5(a)), but no explanation is provided for why those minimum requirements are inadequate to be considered "timely," especially considering they are only minimum requirements: CalRecycle can update the list whenever it deems necessary, such as when CalRecycle publishes information pursuant to Public Resources Code section

42355.51(d)(1)(B)(iii). CalRecycle declines to adopt a greater frequency than provided in statute, which reflects the Legislature's understanding of what is adequate.

Comment O-82-36

§ 18980.2.6. Covered Material Category List Recommendations

AMERIPEN supports the language in paragraph (a) clarifying that entities may recommend changes to the CMC List in alignment with the timing for submissions in paragraph (f) of section 18980.2.5. To further ensure that CMC List updates are considered in a cohesive manner, AMERIPEN recommends requiring the Department to consider any recyclability determination information timely submitted pursuant to paragraph (f) of section 18980.2.5 when considering any suggested updates for a CMC List update for the same material pursuant to paragraph (a) of section 18980.2.6. AMERIPEN also recommends allowing industry associations, trade associations, and groups of producers to recommend changes to the CMC List.

Response to O-82-36

CalRecycle rejects the commenter's suggestion because sections 18980.2.5 and 18980.2.6 already have substantially the same effect as the one the commenter requests. Section 18980.2.5(f) establishes time constraints on when CalRecycle will consider information submitted concerning CMC list updates. In turn, section 18980.2.6 concerns CMC list recommendations that a PRO, participant producer, or Independent Producer submit, and it expressly states that those recommendations are "subject to the same time constraints applicable to information submitted under [section 18980.2.5(f)]." The only manner in which the proposed regulations do not achieve the commenter's desired effect is that, under 18980.2.5(f), information may not be considered on the same timeframe as recommendations submitted under 18980.2.6 if the information is not "sufficiently limited." But that limitation is logically necessary in every event—CalRecycle cannot review information if doing so is beyond its capacity—and applies to both 18980.2.5 and 18980.2.6 equally.

With regard to the commenter's request that entities other than producers (individually or collectively) make recommendations pursuant to this section, the comment is rejected. The purpose of this section is to provide a process for the statutory requirements of PRC section 42061(f)(3), which only concerns producers. Moreover, nothing in statute or the proposed regulations restricts interested parties from collaborating with a PRO or individual producers concerning CMC list recommendations. Importantly, the proposed regulations do not generally prohibit any person from submitting information to CalRecycle. While CalRecycle will not necessarily consider specific recommendations submitted to it other than as described in section 18980.2.6, subdivision (f) of section 18980.2.5 explains that, subject to minimal restrictions, it will consider information submitted by any person when updating the CMC list. This level of participation (the ability to submit information for CalRecycle to consider)

reasonably accommodates interested persons who are not directly subject to the Act but wish to provide information to CalRecycle relevant to its maintenance of the CMC list.

Comment O-82-37

Article 3: Evaluations of Covered Material and Covered Material Categories

§ 18980.3. Recyclability

Paragraph (d) requires a producer to supply the Department, upon request, with specified lab testing to verify compliance with chemical ingredient requirements. AMERIPEN requests that producers be given the alternative option to comply with this via provision of material safety data sheets or certificates of compliance from their suppliers, as this will demand fewer resources while utilizing readily available information. This would be like requirements in the rules for Maine's packaging stewardship law.3

Response to O-82-37

Comment rejected. Statute expressly requires application of 14 CCR 17989.2, as that section existed as of enactment of SB 54. For the presence of PFAS, that section expressly requires the testing described in section 18980.3(d). More generally, to the extent any material safety data sheets or certificates of compliance are not backed by test results from a qualified laboratory, they are not trustworthy indicators of compliance; and, if any data sheets or certificates of compliance that are backed by such results, that would mean that compliance with 18980.3(d) would be straightforward.

Comment O-82-38

For subparagraph (e)(3), AMERIPEN notes recovery rates will vary for items based on consumer habits and it is unclear if the timing contemplated in this subparagraph will sufficiently capture reuse and refill. Producers are unlikely to have data on "the average time between the items' sale or distribution and collection," and it will be difficult to determine a reliable figure for each given item. Furthermore, food service ware may be retained for longer than single-use packaging. AMERIPEN suggests reconsideration of whether it is necessary to impose the one-year timeframes proposed in this subparagraph, and suggests instead deferring to a PRO or Independent Producer to propose within their program plan a calculation methodology for paragraph (5) of subdivision (d) of PRC section 42355.51.

Response to O-82-38

Comment rejected. Regarding the recommendation that the PRO or Independent Producers be permitted to propose a calculation methodology, no change is necessary because section 18980.3(f) already provides that the PRO and Independent Producer plans must address how compliance will be demonstrated but does not prescribe specific methodologies for the systems producers develop

to do so. Subdivision (e) imposes no restrictions except for the one-year period and the offset between sale or distribution and collection. Modifying that one-year period is unnecessary because, over time, using any period for which accurate data is available will accurately gauge a program's effectiveness. To the extent using a one-year period presents difficulty or accuracy concerns caused by the newness of a program, exemptions and phase-in plans based on Public Resources Code section 42060(a)(3) are available. Section 18980.2.4(c)(4)(B) specifically addresses that scenario.

Comment O-82-39

Paragraph (f) contains a discrepancy in the level of scrutiny between producers participating in a PRO and Independent Producers required to verify continuing eligibility for recyclability pursuant to PRC sections 42355.51(d)(4) and section 42355.51(d)(5). The setting of a specific auditing frequency of annually and specifying verification duties for only the PRO exacerbates this issue. For consistency and equitability, AMERIPEN requests that both producers participating in a PRO and Independent Producers be subject to the same standard, whether it is the one provided subparagraph (f)(1)(C) or the one provided in subparagraph (f)(2)(B).

Response to O-82-39

Comment rejected. No change is necessary because the different nature of PROs and Independent Producers require different approaches. A PRO necessarily acts on behalf of its participant producers, and that function is central to achieving efficient implementation and enforcement of SB 54. To reasonably fulfill that function, a PRO must establish uniform processes through which it verifies information from producers demonstrating that covered material satisfies applicable requirements for being considered recyclable. Statute expressly requires that a PRO's plan include "measures to ensure that producers participating in the plan comply with the requirements of the plan and this chapter," including "protocols to ensure that the PRO becomes aware" of violations. In contrast, Independent Producers act on their own behalf, so a more streamlined, case-by-case evaluation of the support sufficiency of their recyclability claims is appropriate.

Comment O-82-40

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

While there previously has been advisement that subdivision (a)(3)(B) of PRC section 42061 places a restriction on timing for the use of the “trending on-ramp,” AMERIPEN notes that this interpretation is an unnecessarily restrictive reading of SB 54. Subdivision (a)(3)(B) of PRC section 42061 allows the Department to utilize the on-ramp “when updating” the MCS, as opposed to when the MCS “is updated.” The Department simply needs to be in the act of making edits to the MCS to utilize the on-ramp, and statute does not restrict when that work may be undertaken (rather, it specifies when the update is “issued”). AMERIPEN therefore recommends beginning

update work as soon as possible to ensure the t imely usage of the “trending on-ramp” to reflect up-to-date recyclability progress.

Response to O-82-40

CalRecycle rejects this comment for the reasons set for in response to comment O-82-41. Regarding the commenter's interpretation of "when updating," that interpretation is clearly wrong because it reads an absurd meaning into the Legislature's stylistic choice to use the adverbial phrase "when updating," which is an obvious reference to the discrete, official act that Public Resources Code section 42355.51(d)(1)(B)(ii) requires CalRecycle to perform every five years: issue a material characterization study. The commenter's interpretation--that CalRecycle is "updating" the study any time it is undertaking the "work" leading up to the update--would interpret the entire phrase "when updating information pursuant to [section 42355.51(d)(1)(B)ii)" out of the statute. CalRecycle's mere act of performing its day-to-day work (as opposed to performing any official act, such as publishing a study) would be "updating" the study and could occur at CalRecycle's whim. That is an extraordinary interpretation of an ordinary statutory reference to a discrete, official act by a governmental entity.

Comment O-82-41

Paragraph (b) establishes criteria for a material to qualify for the “trending on-ramp,” as provided in PRC section 42061(a)(3)(B). For a material to be eligible, there must be a demonstrated “increase in the collection and sorting” of the material that “is more likely than not to continue” and “is more likely than not to result in the covered material category satisfying the requirements of paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code before the next mandatory update to the material characterization study.” In essence, this paragraph requires a CMC to demonstrate likelihood to fully satisfy the recyclability provisions of SB 343 before the next material characterization study (MCS) update (i.e., within five years).

This time limit imposed in subparagraph (b)(3) is not required anywhere under SB 54 and is arbitrarily short. The law refers to “materials that are trending toward meeting” certain requirements of SB 343, without any conditions placed on what “trending” entails. AMERIPEN understands it may be desirable to provide specificity to implement this provision and acknowledges the Department’s rationale provided in the Initial Statement of Reasons regarding “the express, non-permanent function of the exemption (to apply to materials expected to fully comply with the Act in the future).” However, the statute can be satisfied without imposing this unjustified expectation for full compliance within five years. It is critical that the “trending on-ramp” be applied to maximize the potential for materials to achieve full “recyclability” under SB 343, but an arbitrary timeline undermines this.

The intent of subparagraph (b)(3) can be achieved by simply requiring the Department to determine the increase will eventually result in satisfaction of PRC section 42355.51(d)(2). As such, AMERIPEN recommends deleting “ before the next mandatory

update to the material characterization study" from this subparagraph. AMERIPEN also recommends making a corresponding change in subparagraph (c)(1).

Response to O-82-41

CalRecycle rejects this comment. Rather than a justification for not imposing reasonable restrictions, the commenter's explanation that the statute refers to SB 343 "without any conditions place on what trending entails" is proof that a regulation establishing the bounds of statute is necessary. The "trending" provision cannot reasonably be interpreted as having no conditions attached; if that were the case, attempts by CalRecycle to apply it would either be arbitrary or constitute a new interpretation of the law, which requires formal regulations.

Moreover, the commenter's proposal (merely requiring a finding that increases will "eventually" result in compliance with PRC section 42355.51(d)(2) requirements) is clearly untenable. Requiring such a minimal determination is so lax that, in application, it would result in permanent exemptions and undermine PRC section 42355.51(d)(2) rather than promote compliance with it. It would be sufficient for the exemption to applies if, for example, CalRecycle determined that a covered material category is more likely than not to satisfy the requirements of section 42355.51(d)(2) within 100 years. Given the inexorable nature of scientific advancement and the likelihood that sufficient economies of scale could render currently cost-prohibitive technologies economically viable in the future, practically any scientific progress and infrastructure expansion could permit such a determination. If the commenter did not intend to suggest that a trajectory of 100 years or more could be sufficient, but instead intended that CalRecycle should in every event apply some reasonable limit, that suggestion demonstrates why the commenter's solution is a non-starter. Without some more concrete indication in the proposed regulations as to what trajectory is reasonably short, CalRecycle's application of the "trending" exemption would be arbitrary or would require CalRecycle to establish some uniform approach, which would constitute an unlawful regulation. A more reasonable application of statute is to require, at a minimum, a finding that compliance will occur before the next mandatory material characterization study update under section 42355.51(d)(1)(B)(ii). Especially given the lack of any other express indication of how imminent compliance must be to be considered "trending" toward it, that interpretation gives reasonable effect to the five-year periodicity of those updates.

Comment O-82-42

§ 18980.3.2. Methodology for Recycling Rate Determination

AMERIPEN requests clarification in paragraph (b) that data for recycling of a given covered material can be combined from curbside and non-curbside or alternative collection programs, as some materials may utilize both systems.

Response to O-82-42

Comment rejected. Nothing in the proposed regulations suggests that whether material is considered "recycled" depends on how it was collected. More specifically, subdivision (b) of section 18980.3.2 does not suggests that the the distinction between curbside and non-curbside collection is relevant; section 18980.3.2 contains no reference to collection. Accordingly, the proposed change is necessary.

Comment O-82-43

Subdivision (b)(2)(A) should be amended as follows to reflect the definition of “recycle” in SB 54: “[…]for the creation of new**, reused,** or reconstituted products.”

Response to O-82-43

Comment rejected. The proposed revision would introduce ambiguous, confusing text because "reuse" has a particular meaning elsewhere in the statute and the proposed regulations, and that meaning would be nonsensical in context of describing end markets and recycling processes. Also, while the statute uses the word "reused" in the definition of "recycle" (Public Resources Code section 42041(aa)(1)), in that context, it is one of a group of adjectives ("new, reused, or reconstituted") that serves as a unitary descriptor for one abstract concept: the output of recycling. Especially considering the overlap between those three adjectives—a "new" product made from used materials is necessarily "reconstituted," and a product "reconstituted" from previous ones comprises material that was "used" and thus could be said to be "reused" in the reconstituted one—the context makes clear that the Legislature did not intend each of those words to stand on their own as describing a different thing. Omitting the word "reused' therefore avoids confusion without losing any meaning.

Comment O-82-44

Local jurisdictions can be exempted from managing covered material categories on a case-by-case basis. To account for this, AMERIPEN requests addition of a subparagraph (4) to paragraph (d) that would require the recycling rate denominator to be adjusted down accordingly based on any jurisdictions that receive exemptions from managing covered material categories.

Response to O-82-44

Comment rejected. First, the commenter provides no rationale for the change, such as why certain materials could not be accounted for. Second, PRC section 42041(ab) defines recycling rate with respect to all covered material, without regard to whether certain covered material complies with all applicable requirements, is exempt from needing to do so, or is not collected by certain local jurisdictions. Third, PRC section 42060.5(b) (authorizing exemptions from the requirement of including certain covered materials in recycling programs) does not exempt any packaging or food service ware from being considered

"covered material" or otherwise suggest that covered material not included in a recycling program should not affect recycling rates. Fourth, exemptions from the obligation to include covered materials in recycling programs are not necessarily category-wide. Lastly, depending on the recycling rate that the covered material at issue otherwise achieves, the commenter's suggestion could have the perverse effect of disincentivizing the PRO from addressing the circumstances justifying the exemption.

Comment O-82-45

AMERIPEN supports the phase-in approach for new CMCs under subparagraph (f) but suggests extending the period to 18 months for the first several years of the program as producers ramp up their reporting capabilities.

Response to O-82-45

Comment rejected. Permitting 18 months would result in an unreasonably long period of uncertainty with respect to recycling rates and related compliance assessments. Also, to the extent extenuating circumstances contribute to the failure to comply with reporting obligations, corrective action plans pursuant to PRC section 24081)(b) or exemptions with phase-in plans pursuant to section 42060(a)(3) may be requested. See, also, responses to comments C-120-34 and C-61-14.

Comment O-82-46

§ 18980.3.3. Eligibility for Being Labeled "Compostable"

Paragraph (e) states "Satisfying the legal requirements for being labeled 'home compostable' pursuant to sections 42355 through 42357.5 of the Public Resources Code or any other law shall not be construed to mean that any covered material is eligible for being labeled 'compostable' for purposes of section 42050(b)." AMERIPEN is disappointed by the addition of this paragraph, as it will hinder the rollout and support for an emerging segment of the organics market. AMERIPEN encourages the Department to strike this paragraph and promote a pathway for these materials to qualify as eligible to be labeled "compostable" under SB 54.

Response to O-82-46

CalRecycle rejects this comment for the reasons provided in response to comment B-48-10.

Comment O-82-47

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

AMERIPEN is grateful for the inclusion of the last sentence in subdivision (b)(4)(B)(ii), which will help avoid an interpretation that the alternative third-party validation entity

would be prohibited from approval simply for purchasing a product from a producer subject to the validation requirement.

Response to O-82-47

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-48

Article 4: Responsible End Markets

§ 18980.4. Responsible End Market Determination Criteria

Subdivision (a)(3)(A) requires a responsible end market to send "incompatible materials that can be further processed and recycled[…] to entities that are authorized to further process and recycle the material." Sending such materials for further processing and recycling is not necessarily a cost-efficient or environmentally preferable option, and thus may raise costs or deter end markets from taking part in California's EPR system. AMERIPEN recommends avoiding application of this mandate in cases that would be counterproductive. This may be achieved by amending the clause as follows: "For incompatible materials that can be further processed and recycled, the entity sends materials to entities that are authorized to further process and recycle the material**, unless the end market determines that doing so would not be cost-effective or would create more impacts to the environment than an alternative**."

Response to O-82-48

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Additionally, the recommended change is inconsistent with the intent and purpose of the Act because it would permit and encourage the disposal of covered materials that are otherwise recyclable. Consistent with the waste hierarchy established in section 40051 of the Public Resources Code, section 18980.4(a)(3) of the proposed regulations is designed to prioritize recycling whenever possible and to prevent the disposal of covered materials. Finally, consistent with section 18980.4.3(a)(2) of the proposed regulations, it is the responsibility of a PRO or Independent Producer, through its plan, to establish how it will facilitate material recycling and assist end markets in satisfying the standards specified in section 18980.4.

Comment O-82-49

Subdivision (a)(4)(A)(i) excludes material "not sent to a responsible end market for further processing" from the denominator in an average recycling yield calculation. AMERIPEN supports this new language, as it will more accurately reflect the final actual yield proportion.

Response to O-82-49

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-82-50

Subparagraph (a)(4)(B) requires an entity to ensure covered material "intentionally included in the process used to generate a recycled organic product must fully biologically decompose" for the entity to qualify as a responsible end market. The rules now limit this condition only to covered material "partially or wholly comprising plastic." It should still be noted that it is not guaranteed that any product, whether it is food waste, vegetation, or a piece of compostable packaging, will fully convert in every compost cycle. Additionally, non-plastic covered material does not necessarily need to fully decompose, and composters can often have remaining pieces of food and yard waste, even after long composting cycles. Moreover, the addition of subparagraph (a)(4)(C) is helpful for non-plastic compostable materials but creates a discrepancy in treatment compared to plastic compostable materials. Finally, end markets are unlikely to be able to distinguish between plastic and non-plastic material that has already disintegrated. AMERIPEN recommends subjecting all covered material intended to generate a recycled organic product be subject to the same standard as provided in subdivision (a)(4)(C). AMERIPEN also suggests that using a term like "disintegrate" rather than "biologically decompose" may be more appropriate, as disintegration is measure by ASTM standards.

Response to O-82-50

CalRecycle rejects this comment. To the extent this comment recommends subjecting all covered material intended to generate a recycled organic product to the standard of section 18980.4(a)(4)(C), see the response to comment B-6-5. To the extent this comment recommends revising that standard to use the term "disintegrate," instead of "biologically decompose," see the responses to comments O-83-5 and O-75-12. No change is necessary.

Comment O-82-51

AMERIPEN greatly appreciates the sentence in paragraph (b) added in a recent draft that allows an entity to qualify as an end market if it "produces and uses" recycled organic product or recycled content feedstock rather than selling or transferring it. AMERIPEN still also seeks guidance as to what qualifies as "quality standards necessary," as used in this section.

Response to O-82-51

CalRecycle rejects this comment, which recommends revising section 18980.4(b) to clarify the meaning of the term "quality standards necessary." The meaning of that term, as it is used in section 42041(aa) of the Public Resources Code and section 18980.4(b) of the proposed regulations, has a plain and straightforward meaning, and no further clarification is necessary to the

implementation or enforcement of the Act. Recycled content feedstock meets the quality standards necessary to be used for the creation of new or reconstituted products if, after being processed, it is in such a state and quality that it may be sold or transferred in the marketplace to be used in lieu of virgin material for the creation of new or reconstituted products. Additionally, because such quality standards will necessarily depend on various factors, including the specific type of covered material at issue and the available technologies, no further clarification in the proposed regulations is necessary or appropriate at this time.

Comment O-82-52

§ 18980.4.1. End Market Identification

Subdivision (a)(3) requires a PRO or Independent Producer to describe how it will obtain cooperation with an end market or intermediate supply chain entity (ISCE) that is not responsible. While this planning is somewhat helpful, AMERIPEN remains concerned that it will be difficult to obtain documentation from end markets and ISCEs to confirm they are responsible. AMERIPEN continues to request that end markets and ISCEs be obligated to provide relevant records to the PRO or Independent Producer to satisfy this need, consistent with what section 18980.4(a)(2)(G) provides for responsible end market entities. This will help ensure PROs and Independent Producers can comply with this requirement for information that they do not have in their possession.

Response to O-82-52

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42041(ad) of the Public Resources Code permits CalRecycle to establish criteria to identify responsible end markets under the Act. Moreover, pursuant to section 42051.1(c), a PRO or Independent Producer is responsible for identifying such responsible end markets it plans to use in its producer responsibility plan. Section 18980.4.1 of the proposed regulations implements these statutory requirements, and section 18980.4.1(a)(3) provides that, to the extent an end market cannot be identified or confirmed as a responsible end market without cooperation from intermediate supply chain entities, the PRO or Independent Producer that has identified the end market must describe how it will obtain such cooperation. As an example, that provision provides that the plan must explain how the PRO or Independent Producer will ensure that intermediate supply chain entities continue to operate with all required permits, licenses, and other clearances. Therefore, the proposed regulations already achieve the intended result of this recommendation in a manner that is consistent with the relevant statutory provisions. No further change is necessary to the implementation or enforcement of the Act.

Comment O-82-53

Section (c) refers to “paragraphs (4) and (6) of subdivision (d) of section 18980.4,” but there is no subdivision (d) in that section. AMERIPEN notes this cross-reference should be corrected, presumably to refer to section 18980.4.1 instead.

Response to O-82-53

Comment accepted. CalRecycle has made a nonsubstantial change to section 18980.4.1(c) of the proposed regulations.

Comment O-82-54

Subparagraph (d)(1)(A) no longer contains a requirement to compare novel recycling technologies against mechanical recycling technologies. AMERIPEN greatly appreciates this change, as the merits of new recycling technologies should not be based on statutory criteria rather than weighed in relation to others.

Response to O-82-54

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-55

§ 18980.4.2. End Market Compliance Audits and Verification

Paragraph (c) requires a PRO or Independent Producer to “annually verify that each end market it uses satisfies the requirements to be a responsible end market[…].” This verification frequency will create substantial recurring costs and compliance burdens for producers. There is little realistic need for repeating verification so often, especially given that end markets will be audited and investigated annually pursuant to this section. AMERIPEN continues to recommend the Department instead make this requirement biennial at minimum and reconsider the frequency in subsequent rulemakings.

Response to O-82-55

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 18980.4.2 requires a PRO or Independent Producer to have annual compliance audits of responsible end markets conducted and completed by an independent third party (section 18980.4.2(a)) and to verify to CalRecycle, in its annual report, that each end market it uses satisfies the requirements to be a responsible end market (section 18980.4.2(c)). CalRecycle, in consultation with its Audits Office, has determined that compliance audits should be conducted annually to ensure entities are compliant with applicable requirements. The annual verification requirement is necessary to ensure CalRecycle is apprised of the results of each audit and to

ensure it regularly receives relevant information that may be necessary to ensure that a PRO or Independent Producer is recycling covered materials in compliance with the Act and its approved plan. The verification requirement will not result in any unnecessary or substantial costs for a PRO or Independent Producer.

Comment O-82-56

A PRO or Independent Producer may not have complete access to or knowledge of certain information regarding an end market, including complaints made against the end market if made to a different entity. Subparagraph (a)(1) of a prior version of section 18980.4.2 acknowledged this limit, but only as it pertains to compliance failures. AMERIPEN continues to recommend making this exception more general by now by amending paragraph (c) as follows: "[…]shall include, but not necessarily be limited to the following**, if in the possession of the PRO or independent producer**:."

Response to O-82-56

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 18980.4.2(c) describes the information that is required for a PRO or Independent Producer to verify that an end market it uses continues to satisfy the criteria for a responsible end market, as set forth under section 18980.4(a). Section 18980.4.1(a)(3) requires a PRO or Independent Producer to describe in its plan how it will obtain the cooperation of any intermediate supply chain entity or end market, where such cooperation is necessary to identify or confirm that an end market satisfies the criteria of section 18980.4(a). See the response to comment O-82-52. Therefore, a PRO or Independent Producer is required to have access to all of the information described in section 18980.4.2(c) to fulfill its verification obligations, and it will be able to access such information pursuant to the description contained in its plan pursuant to section 18980.4.1(a)(3). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-82-57

§ 18980.4.3. End Market Development

Paragraph (b) requires a PRO or Independent Producer to conduct a study for covered material that does not have an end market, unless the PRO or Independent Producer opts to phase out the material. Subparagraph (b)(3) requires the PRO or Independent Producer to invest in alternatives for the material proposed to be phased out. To avoid unneeded expenditures when developing and implementing alternatives would duplicate existing efforts, AMERIPEN recommends adding the following caveat immediately before the final sentence of subparagraph (b)(3): "This investment requirement does not apply if additional investment in alternatives is not necessary."

Response to O-82-57

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1 and 42060 of the Public Resources Code, and the recommended changes are not necessary to the implementation or enforcement of the Act. Section 18980.4.3(b)(3) of the proposed regulations simply provides that, if a PRO or Independent Producer opts to phase out a covered material instead of conducting a study pursuant to section 18980.4.3(b)(1), then it must invest in alternatives to that covered material to facilitate phasing it out. If the PRO or Independent Producer is already investing in alternatives to a sufficient degree where it is facilitating the phasing out of the covered material, then no additional investment is required by section 18980.4.3(b)(3). Therefore, the language of section 18980.4.3(b)(3) is already sufficiently clear and no change to that section is necessary to achieve the result recommended by this comment.

Comment O-82-58

Article 5: Requirements for Producers

§ 18980.5. Producer Compliance

AMERIPEN appreciates the final sentence in paragraph (b) clarifying that a producer is not required to participate in a PRO plan or develop an Independent Producer plan for covered material not sold, offered for sale, imported, or distributed in California.

Response to O-82-58

While CalRecycle appreciates the commenter's support, not further response is required for this comment as it does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-59

Paragraph (c) previously required participant producers that leave a PRO to apply to become an Independent Producer within six months. With this language deleted in a prior draft, AMERIPEN seeks clarification about the expected deadline for producers in this situation.

Response to O-82-59

CalRecycle rejects this comment as no substantive response is required because the comment raises general concerns that are already sufficiently addressed in the regulations, including 18980.5 and 18980.5.1 in conjunction, with no additional specific recommendation or explanations required.

Comment O-82-60

§ 18980.5.2. Exemptions for Small Producers

AMERIPEN appreciates the extension of the exemption duration for small producers from one year to two years. This will lower administrative costs for producers and the Department while also providing more market stability for producers with limited resources.

Response to O-82-60

While CalRecycle appreciates the commenter's support, his comment is rejected as it does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-61

Article 6: Requirements for the Producer Responsibility Organization

§ 18980.6.5. Annual Reports

AMERIPEN supports the change made in this section and elsewhere in the regulations to split the annual report into two phases. This will allow more time for the PRO to process data reporting and prepare annual fee rates, in better synchronization with other states' EPR programs.

Response to O-82-61

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-62

§ 18980.6.7. Eco-modulated Fee and Fee Schedule

Paragraph (g) requires a PRO to "develop a formula to calculate each participant's market share and corresponding surcharge assessment," and requires the formula to "be based on the number of plastic components and weight of plastic covered material a producer offers for sale, sells, distributes, or imports in or into the state." However, PRC section 42064(f)(1) requires the environmental mitigation surcharge to be based on each producer's "market share of plastic covered material, accounting for both number of plastic components and weight." AMERIPEN recommends addition of the "market share" factor into this paragraph to ensure alignment with SB 54. AMERIPEN also appreciates the language accounting for Independent Producers' share of the annual environmental mitigation surcharge.

Response to O-82-62

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42053, 42060, and 42064, and no change is necessary to the implementation of the Act. As noted by this commenter, section 18980.6.7(g) of the proposed regulations already incorporates the "market share" factor established in PRC 42064(f)—in their entirety, the first two sentences of section 18980.6.7(g) read: "In assessing fees

pursuant to paragraph (5) of subdivision (c) of section 42053 of the Public Resources Code, a PRO shall develop a formula to calculate each participant's market share and corresponding environmental mitigation surcharge assessment. Pursuant to section 42064(f) of the Public Resources Code, the formula shall be based on the number of plastic components and weight of plastic covered material a producer offers for sale, sells, distributes, or imports in or into the state." Therefore, section 18980.6.7(g) of the proposed regulations already faithfully and accurately implements the market share requirement of PRC section 42064(f). To the extent this comment expresses support for section 18980.7.6, no response is necessary because this comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. No further change is necessary.

Comment O-82-63

Paragraph (h) lists descriptions in a certain publication ("design guide") that would result in a specific element being considered "to make recycling more difficult" under the proposed rules. One such description is "requires test results." However, the fact that the publication states that an element "requires test results" is different from a determination that it is detrimental; rather, as its title indicates, it is an indication that further investigation is needed to determine whether the element is detrimental. An element may be found to be "preferred" after testing and therefore should not be considered detrimental. Thus, AMERIPEN continues to request the Department amend paragraph (g) as follows: "…or 'requires test results.' **unless the element passes the required test.**" Additionally, this "more difficult" standard should not apply to products that are managed through composting, as that process is subject to different requirements than standard recycling.

Response to O-82-63

CalRecycle rejects this comment. To the extent this comment recommends revising the proposed regulatory language concerning test results, see the response to comment B-47-4. To the extent this comment recommends revising the language to provide that the "more difficult" standard does not apply to products that are managed through composting, no change is necessary. Section 18980.6.7(h) of the proposed regulations is sufficiently clear and no further clarification is necessary. The requirement of PRC section 42053(d)(2) specifically applies to covered materials managed through both the recycling and composting process. Thus, both are subject to malus fees for the incorporation of specific elements that make recycling or composting more difficult. While the reference in PRC section 42053(d)(2) to the APR design guide only applies to covered materials managed through the recycling process, that section further allows for determinations based on "other relevant industry association" publications. For covered materials managed through the composting process, therefore, a PRO or Independent Producer must incorporate into its plan any applicable publications that are appropriate for evaluating whether composting is made more difficult by the incorporation of specific elements under PRC section 42053(d)(2). This incorporation authority is established in section 18980.8(j)(2) of

the proposed regulations. Therefore, the current proposed regulations are sufficiently clear and no further changes are necessary.

Comment O-82-64

Paragraph (i) requires a PRO to "charge a malus fee to producers who use covered material that contains a chemical listed on" the Proposition 65 List. Under this proposal, a malus fee would be triggered for the mere presence of any chemical on the list irrespective of its hazardous status. However, Proposition 65 is more nuanced. Equating presence with hazard is unscientific and will result in a sprawling list of chemicals that unnecessarily trigger a malus, thereby creating unwarranted costs. Moreover, listed chemicals often have "safer harbor levels," including No Significant Risk Levels (NSRLs) and Maximum Allowable Dose Levels (MADLs). According to the California Office of Environmental Health Hazard Assessment (OEHHA), "Exposure levels and discharges to drinking water sources that are below the safe harbor levels are exempt from the requirements of Proposition 65." Therefore, paragraph (i) should be amended to focus on the presence of hazardous materials identified by the state rather than using Proposition 65. Should CalRecycle instead maintain an approach relying on Proposition 65, a malus fee should apply only in instances where the presence of a Proposition 65 List chemical exceeds an established safe harbor level. Such an approach would be more consistent with PRC section 42053(e)(4), which references "hazardous material as identified by" OEHHA, since chemicals with safe harbor levels should not be considered hazardous if they do not exceed the level identified by OEHHA.

Response to O-82-64

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-82-65

§ 18980.6.8. Recordkeeping and Reporting Requirements

Subdivision (a)(1)(D) was added in a previous draft to require a PRO to maintain annual records of the total weight of material disposed for each CMC, disaggregated by participant producer. This is a very granular level of information that will be nearly impossible to track down for each material and for each producer. AMERIPEN recommends deletion of this subdivision, just as subdivision (a)(5) was deleted in a prior draft, and AMERIPEN recommends deletion of subdivision (a)(2)(C) for similar reasons. AMERIPEN also recommends corresponding deletion of subdivision (a)(1)(D) and subdivision (a)(2)(C) in section 18980.7.7 to make the same changes for Independent Producers, and deletion of related language in section 18980.10.2..

Response to O-82-65

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42051.1, 42052, and 42060 of the Public Resources Code, and the recommended changes are not necessary to the implementation or enforcement of the Act. Section 42052(a)(4)

requires a PRO or Independent Producer to annually submit any information deemed necessary to collect and report data pursuant to section 42060(a), and section 42064(d) requires a producer or PRO to maintain records of covered materials offered for sale, sold, distributed, or imported in or into the state in a form and manner established by CalRecycle that CalRecycle determines is necessary to determine if a producer is in compliance with the Act during an audit. Consistent with those statutory requirements, CalRecycle has determined that the information concerning the total weight of material disposed is necessary to enforce the Act and to ensure that its requirements, including the requirements established in section 42050 and the policy goal established in section 41780.01, are met. Additionally, this requirement is not overly burdensome and will not result in unnecessary administrative costs, because the data reported pursuant to section 18980.6.8(a)(1)(D) will closely relate to the data already being reported pursuant to section 18980.6.8(a)(1)(C).

Comment O-82-66

Article 8: Producer Responsibility Plan Requirements

§ 18980.8. Producer Responsibility Plan

Paragraph (d) previously authorized but now requires a program plan to include various education and promotion efforts. While the listed elements are generally reasonable, there may be cases where such elements are unnecessary or are already provided and therefore these actions would be duplicative. AMERIPEN recommends reverting this paragraph to be discretionary, to afford the PRO or Independent Producer more discretion in designing its education and outreach work.

Response to O-82-66

CalRecycle rejects this comment. The proposed changes are unnecessary because they merely reiterate the requirements set forth in PRC section 42051.1(e); that provision requires plans to "use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems" and requires the PRO to "ensure coordination between these efforts and existing educational and promotional efforts." Further, section 18980.8(d) is necessary to list the minimum applicable requirements and enable PROs and Independent Producers to go through the list to ensure they include all required information in their producer responsibility plans.

Comment O-82-67

AMERIPEN supports several of the changes made in paragraph (g), including the following: clarifying that producer funding of costs can take forms other than reimbursement; explicitly providing that pre-2023 costs are not covered; allowing for performance-based compensation approaches; and preventing duplicative compensation for the same activity. AMERIPEN supports these changes that together allow for a clearer and more workable system for producers, local jurisdictions, and recycling service providers.

Response to O-82-67

While CalRecycle appreciate your support and comments, this comment is rejected as it does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-68

Paragraph (h) requires a program plan to include a cost dispute resolution process, and subparagraph (h)(3) requires the process to "avoid unnecessary burden on local jurisdictions and recycling service providers." It is unclear what would qualify as an "unnecessary burden," so AMERIPEN recommends clarification that the phrase refers to "necessitating a significant amount of new financial or technical resources."

Response to O-82-68

Comment rejected. Both the current text and the proposed changes would rely on the objective test of necessity, the latter would introduce the ambiguous concept of "significant amount," which will decrease clarity. Also, the change would replace "burden" with the narrower "new financial or technical resources." That is both less clear and unjustifiably limiting: It is unclear what would constitute a "new" resource, and there is no legitimate reason why avoidable burdens of any type should be considered acceptable. The commenter provides no justification for why avoiding the imposition of unnecessary burden (regardless of whether it relates to "new" resources) would be overly restrictive on the process that the PRO may adopt.

Comment O-82-69

Former § 18980.8.3. Source Reduction Adjustments

The 2025 informal draft rules removed Section 18980.8.3, which previously would have specified procedures for allowing a source reduction plan to utilize adjustment factors and methods for f luctuations in the economic conditions and the number of producers participating in a PRO plan. It is unclear whether adjustments can be made without this language, even though SB 54 does not prohibit them. The previous language required implementation of these factors and methods in an unbiased manner and with Department oversight. Allowing such adjustments is critical to the function of packaged consumer goods and food service ware. Without adjustments, producers will have to work against an absolute baseline. It is not sufficient to argue that some producers can be assigned a larger obligation to source reduce to address this issue, since there is a practical limit to how much source reduction can be achieved even in aggregate. Additionally, population and market conditions can outstrip that limit in a way that cannot be mitigated. Because the baseline would be static and cannot reflect population changes or changes in the number of producers, producers would have to pull off the shelves products that have reached their maximum feasible source reduction and that do not have feasible alternatives; this in turn limits available consumer options, creates sunk costs, results in product losses, and generates unnecessary environmental impact.

Additionally, in the event of a decline in population or producers, it will result in more plastic available to use in plastic than intended under the law.

Finally, the source reduction baseline also explicitly should be able to be adjusted and normalized for business growth. Sales numbers can fluctuate with population and producer changes but also can fluctuate for any number of other reasons (e.g., shifts in consumer preferences, e-commerce trends, and advances in technology). Without this adjustment, growing businesses could be forced to bear a disproportionate share of source reduction burden solely by virtue of their growth. As a result, it is important to consider sales growth when setting adjustment factors.

Therefore, AMERIPEN urges the Department to restore Section 18980.8.3 as contained in the December 2024 draft of the rules and to explicitly include changes in sales volume as grounds for adjustment as part of paragraph (c).

Response to O-82-69

CalRecycle rejects this comment for the reasons set forth in response to comment B-11-6.

Comment O-82-70

Article 9: Source Reduction Baseline Report and Annual Reports

§ 18980.9.1. Annual Reports

PRC section 42057(a) establishes phased-in source reduction requirements that take effect on January 1 of 2027, 2030, and 2032. However, there is no clarity in the statute or regulations as to how to measure compliance with these requirements. To afford appropriate time to implement these requirements and not begin counting compliance before they take effect, AMERIPEN recommends adding language specifying that compliance is measured in the one-year period covering the calendar year for each of the three phase-in dates. This will comply with the letter of the law and help prevent unnecessary removal of covered material from the market in the near future. Specifically, subdivision (d)(2)(A) can be amended as follows: "Percentage of reduction across all participant producers **achieved during the applicable calendar year 2027, 2030, or 2032, respectively, based on producer source reduction reporting pertaining to calendar year 2027, 2030, and 2032, to determine the PRO's compliance with its source reduction plan and the requirements of subdivision (a) of section 42057 of the Public Resources Code."**

Response to O-82-70

CalRecycle rejects this comment, see responses to B-27-2, I-63-15, O-48-5, and O-41-4. Please also see response to I-63-16.

Comment O-82-71

Article 10: Registration and Data Reporting Requirements

§ 18980.10.2. Data Report Contents

Subparagraph (a) requires producers or their PRO to submit, by CMC and for the previous calendar year, the total weight of material and the total number of plastic components that were sold, distributed, or imported in or into the state, the total weight of material disposed, and the total weight of material recycled.

Producers may not have a way to accurately measure or determine the actual number and weight of covered materials in this state-specific manner, given the complexity of that proposition. Therefore, AMERIPEN requests that producers explicitly be allowed to use national sales data and prorate it to estimate their share produced for California. This is critical to ensure many producers have a viable pathway to satisfy the reporting obligations, particularly those with fewer resources as a matter of equity. The Maine Department of Environmental Protection has adopted rules for Maine's packaging EPR program that can serve as a model for estimating units produced.4

Response to O-82-71

CalRecycle rejects this comment. The relevant reporting requirements in section 18980.10.2 of the proposed regulations are consistent with the requirements of section 42052(a) of the Public Resources Code. That provision requires the aggregate quantities in total weight and number of plastic components—not merely an estimation of such quantities—to be reported, and CalRecycle does not have statutory authority to depart from that requirement. These proposed regulations require no more information than what is necessary to determine a producer's or PRO's compliance with this Act, and the comment has identified no less burdensome reporting metric that would adequately capture the information that is required to be reported under section 42052(a) of the Public Resources Code. See responses to comments B-30-12, I-63-15, B-27-2, I-63-15, O-48-5, and O-41-4 for additional information.

Comment O-82-72

Related, manufacturers occasionally produce customized packaging for products for which the producers cannot extrapolate their reporting or data from standard packaging options. In these cases, packaging may be tailored and determined after the product to be packaged is manufactured. AMERIPEN recommends affording a PRO some authority to determine a mechanism for estimating reportable volume in such exceptional circumstances involving customized packaging.

Response to O-82-72

CalRecycle rejects this comment. The relevant reporting requirements in section 18980.10.2 of the proposed regulations are consistent with the requirements of section 42052(a) of the Public Resources Code. That provision requires the aggregate quantities in total weight and number of plastic components—not merely an estimation of such quantities—to be reported, and CalRecycle does

not have statutory authority to depart from that requirement, nor can CalRecycle adequately entertain or sufficiently address what amounts to a hypothetical scenario. These proposed regulations require no more information than what is necessary to determine a producer's or PRO's compliance with this Act, and the comment has identified no less burdensome reporting metric that would adequately capture the information that is required to be reported under section 42052(a) of the Public Resources Code. Response to comment B-30-12 may provide additional information.

Comment O-82-73

Various requirements in this section entail reporting on the postconsumer disposition of covered material, including the weight of material disposed or recycled. Individual producers cannot obtain this information in any generally feasible manner, so recyclers and disposers must provide it to the reporting entities. This data sharing necessity is not readily apparent in the proposed regulations but is a fundamental requirement of any functional EPR program. Therefore, AMERIPEN requests the addition of language that obligates recyclers, disposers, and other postconsumer managers of covered material to share relevant data with reporting entities. Such language may include confidentiality requirements, as necessary.

AMERIPEN is grateful for the change to the reporting increments in paragraph (b) from monthly to annual. This will greatly lower the burden on producers to gather and manage supply data, especially firms with less capacity to track such data.

Response to O-82-73

CalRecycle rejects this comment because the recommended changes are not necessary and do not raise issues related to the rulemaking process. The proposed regulations are consistent with the requirements set forth in the Act. The commenter does not identify any statutory language authorizing CalRecycle to require intermediate supply chain entities or end markets to share the relevant information with a PRO or producers, nor does the comment identify statutory language authorizing CalRecycle to promulgate specific regulations as requested. Rather, pursuant to section 42051.1 of the Public Resources Code, a PRO's producer responsibility plan must describe, among other requirements, how the PRO will meet the requirements of the Act and how the PRO will support and achieve the collection, processing, recycling, or composting of covered materials. Additionally, there is nothing in the Act or the proposed regulations preventing these entities from voluntarily entering into agreements to share such information, and such agreements may involve the exchange of relevant data and the protection of confidential information.

Comment O-82-74

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

§ 18980.11. Requirements for Local Jurisdictions and Recycling Service

Paragraph (b) includes language stating that “the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable,” thereby allowing a local jurisdiction to seek an exemption from collection of that covered material. While that may be a reasonable outcome in some cases, AMERIPEN cautions that the mandatory nature of this sentence removes flexibility for implementing the program and could jeopardize collaborative efforts to ensure collection of covered materials. Therefore, AMERIPEN argues the “shall” should be replaced with “may” to maintain full discretion for CalRecycle when considering collection exemptions.

Response to O-82-74

CalRecycle rejects this comment for the reasons stated in response to comment B-48-9. As further explained in that response, the suggested change would result in a regulation with an unclear requirement—the effect of the absence of responsible end markets would be indefinite, if not illusory—that could not be applied in a reliable, non-arbitrary manner.

Comment O-82-75

§ 18980.11.1. Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers

AMERIPEN requests addition of a requirement for a PRO to make exemption requests available to all participant producers so that they have awareness of local jurisdictions’ and recycling service providers’ plans for material management.

AMERIPEN suggests clarifying throughout this section that these provisions apply to recycling “and composting” programs, as is provided in subparagraph (d)(3).

Response to O-82-75

Comment rejected. The proposed addition of a requirement for a PRO to make exemption requests available to all participant producers is unnecessary because nothing in the proposed regulations restricts a PRO from ensuring that participant producers are made aware of governments' and recycling service providers' plans for material management. The regulation as drafted provides a reasonably efficient process to address the commenter's concerns by empowering the PRO to exercise its discretion to act on behalf of its participant producers. Statute contemplates this arrangement: PRC section 42060.5(b) mentions objections by the PRO, not objections by participant producers. Permitting every participant producer to directly participate in the exemption process would impose a potentially enormous burden on the application process that could render the statutory exemption effectively unavailable.

Additionally, the proposed clarification regarding composting is unnecessary because section 18980.11(a) of the proposed regulations makes it clear that "For

all purposes under the Act, the term "recycling programs" encompasses composting-related collection and processing." Accordingly, the proposed regulations accommodate the commenter's concerns.

Comment O-82-76

§ 18980.11.2. Exemption for Rural Counties and Rural Jurisdictions

As with the request in the previous section, AMERIPEN requests that a PRO be required to inform participant producers of any adopted rural jurisdiction exemptions.

Response to O-82-76

Comment rejected. The proposed addition of a requirement for a PRO to inform participant producers of any adopted rural jurisdiction exemptions is unnecessary because nothing in the proposed regulations restricts a PRO from ensuring that participant producers are made aware of those exemptions. Additionally, a participant producer can obtain this information by submitting a California Public Records Act request to CalRecycle, since CalRecycle is the entity notified of those exemptions under section 18980.11.2.

Comment O-82-77

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

§ 18980.13. Compliance Evaluation and Determination

Paragraph (c) provides that, “Except as specifically set forth in this section, for each discrete requirement of the Act, this chapter, or a Producer Responsibility Plan, each distinct condition, action, or course of action constituting or resulting in a violation of the requirement shall constitute a single violation of the Act.” It is unclear what constitutes a “distinct condition, action, or course of action.” For example, it is unclear if the production of a line of products that does not meet the recyclability requirements of SB 54 constitutes a single action, or if the production of each product is a separate action. AMERIPEN continues to seek clarification of this provision but cautions the Department to implement it in a manner that balances compliance with avoiding being prohibitively punitive. Such balance would be achieved, for example, by treating a noncompliant product line as a single violation.

Response to O-82-77

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in PRC sections 42050, 42060, 42080, and 42081, and no changes to the proposed regulations are necessary to the implementation or enforcement of the Act. The meaning of "each distinct condition, action, or course of action," as it is used in section 18980.13(c) of the proposed regulations, is sufficiently clear and does not require additional clarification. Moreover, section 18980.13(h) of the proposed regulations

adequately and clearly addresses the situation identified in this comment. No further changes to the proposed regulations are necessary.

Comment O-82-78

As used in paragraph (d) and throughout Article 13, AMERIPEN seeks clarification as to the meaning of the word “accrue.” PRC section 42081(a)(3) states that, “Penalties against a PRO or producer shall not begin accruing with respect to a violation until 30 calendar days following the notification of the violation.” AMERIPEN is under the understanding and supports that “accruing” in this context means accumulating, such that entities would not be liable for penalties for any violations that occur before the thirty-first day after the notice of violation. Does CalRecycle interpret “accrue,” in SB 54 and in the proposed rules, to mean “to accumulate” or does CalRecycle interpret it “to become due?” If the Department interprets it as “to become due,” AMERIPEN requests it provide parties receiving a notice of violation with ten business days to respond to and cure any violation to provide reasonable time to address simple issues without incurring penalties. AMERIPEN appreciated the replacement of “further accrue” with “begin accruing” in subparagraph (e)(1) for penalties relating to failure to maintain records in the prior draft. This is more consistent with SB 54 and the other provisions in this section, such that an initial violation would not be subject to a penalty before the thirty-day period.

Response to O-82-78

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in PRC sections 42060 and 42081, and the recommended change is not necessary to the implementation or enforcement of the Act. As acknowledged by this comment, section 42081(a)(3) provides that any penalties against a PRO or producer shall not begin accruing with respect to a violation until 30 calendar days following the notification of the violation. Section 18980.13(d) of the proposed regulations implements this requirement by providing that, for different types of violations, penalties will begin to accrue after the thirtieth day after CalRecycle issues a notice of violation. "Accrue" in this context has a straightforward, understandable, and plain meaning that is consistent with the statutory requirement established in PRC section 42081(a)(3). Finally, to the extent this comment poses questions to CalRecycle, as opposed to making any recommendation or objection that is specifically directed at CalRecycle's proposed regulations, no response is required.

Comment O-82-79

AMERIPEN continues to seek more direction in the enforcement section about how CalRecycle will deal with obligated producer entities that fail to register with a PRO or act as an Independent Producer, thereby avoiding financial and compliance obligations (“free riders”). At a minimum, AMERIPEN recommends that CalRecycle: (1) develop a methodology to identify producers that fail to register or act by the deadline; and (2) state in the regulations that any entity found to have avoided registration as a covered entity will be required to publicly report to the Department on the nature and duration of

its violation and be obligated to compensate a PRO and the Department for the fees and penalties it would have paid if it had complied with its obligation in a timely manner.

Response to O-82-79

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in PRC sections 42060, 42080, and 42081, and the recommended changes are not necessary to the implementation or enforcement of the Act. Pursuant to PRC section 42051(b), a producer is required to participate in an approved PRO plan, or otherwise comply with the Act as an Independent Producer, by January 1, 2027. Section 18980.5(b) of the proposed regulations implements this statutory provision by offering additional clarification as to this requirement. Pursuant to PRC section 42080(a), CalRecycle will conduct any investigations and audits as necessary to determine whether a producer is in compliance with the requirements of sections 42051(b) and 18980.5(b). Consistent with sections 18980.13(c) and 18980.13.2(a) of the proposed regulations, any failure by a producer to comply with the requirements of section 42051(b) and 18980.5(b) will constitute a violation of the Act and will subject that producer to penalties. Finally, pursuant to PRC section 42081(c), CalRecycle will determine the appropriate penalties amount for such a violation after considering the various factors identified in that section. Therefore, the proposed regulations already give effect to CalRecycle's enforcement obligations and authority in a manner that is consistent with the requirements set forth in the Act and no further revisions are necessary.

Comment O-82-80

§ 18980.13.4. Procedure for a Hearing

Paragraph (b) provides only 15 days for a respondent to request a hearing to contest a proposed enforcement action, which was reduced from the 30 days provided in the draft version of the rules released in December 2023. Respondents need ample time to consider the allegations of a violation, examine the circumstances, and decide whether contesting the matter is merited. To afford sufficient time accordingly, AMERIPEN continues to request restoration of the full 30 days to make a hearing request.

Response to O-82-80

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060, 42080, and 42081, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 18980.13.4(b) of the proposed regulations provides that a respondent may submit a request for a hearing to CalRecycle within fifteen days of being served an accusation pursuant to section 18980.13.3(c). However, the accusation will necessarily follow the issuance of at least one notice of violation, consistent with section 18980.13.3(a), and any other communications, requests, investigations, or audits conducted by CalRecycle pursuant to PRC section 42080(a). Therefore, by the time the respondent

receives the accusation, it will have already had the opportunity to consider the merits of the purported violations and to determine whether contesting the matter is appropriate. Thus, a timeline of fifteen days following receipt of the accusation to submit a request for a hearing provides the respondent with sufficient time and opportunity to make an informed decision, and no changes to the proposed regulations are necessary.

Comment O-82-81

Paragraph (d) allows the Department to "take any disciplinary or remedial action authorized under" SB 54 after conducting a hearing on the merits or if no hearing is requested. The mere conducting of a hearing should not authorize the imposition of penalties; instead, the Department should only proceed with penalties if the hearing proves the respondent is at fault. AMERIPEN requests this paragraph amended accordingly as follows: "After conducting a hearing on the merits **and finding the respondent at fault**, or if no hearing is requested, the Department may take any disciplinary or remedial action authorized under the Act, including those described in section 18980.13.5."

Response to O-82-81

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060 and 42081, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 18980.13.4(d) of the proposed regulations only concerns the timing with which CalRecycle can take disciplinary or remedial actions (i.e., only after a hearing has been conducted on the merits or after no hearing has been requested pursuant to section 18980.13.4(b)). Section 18980.13.4(d) does not relate to the standard of conduct or burden of proof that must be established to warrant disciplinary action. The Act and proposed regulations are clear that penalties will only be imposed where violations of the Act have been established, and no further changes to section 18980.13.4(d) are necessary to achieve this result.

Comment O-82-82

CHAPTER 11.5 ENVIRONMENTAL MARKETING AND LABELING

Article 1: Approval of Certification Entities

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

AMERIPEN appreciates the amendment made to subparagraph (b)(2)(B) consistent with the prior amendment made to subdivision (a)(4)(B) of section 18980.3.4 to exempt transactions for routine or administrative expenses unrelated to approval.

Response to O-82-82

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-82-83

AMERIPEN strives to offer a good-faith and proactive approach. We continue to focus on strategies that develop and/or strengthen policies to advance the “reduce, reuse, recycle” strategies, while also enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN looks forward to the continued open dialogue with the Department while collectively balancing the myriad needs of the packaging industry, developing sound solutions to foster a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, ultimately supporting the success of this program. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

AMERIPEN thanks the Department for this opportunity to provide written comments regarding the proposed regulations for SB 54 and appreciates the Department staff during the SB 54 regulatory process. Please feel free to contact me by email (GMelkonian@serlinhaley.com) with any questions on AMERIPEN’s positions.

Response to O-82-83

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-83: Biodegradable Products Institute (Alexander Truelove)

Comment O-83-1

To CalRecycle,

The Biodegradable Products Institute (BPI) is North America’s leading organization representing certified compostable materials, products, and packaging, with over 600 member companies worldwide and tens of thousands of certified products. BPI is the foremost association for the circular bioeconomy who convenes the compostable product value chain, and facilitates inclusive discourse to create consensus on

actionable, science-backed standards, claims, and policy. Our certification program has verified tens of thousands of items using ASTM standards as a baseline, with additional requirements to prohibit PFAS, promote clear labeling, and sensible eligibility criteria, all to help to keep organic waste out of landfills.

As an active stakeholder in the development of Senate Bill 54 and champion of its goal to make all covered products and packaging in California reusable, recyclable, or compostable by 2032, we'd like to further clarify and contextualize our comments in response to this version of the regulatory text.

While many of our comments below support the regulations proposed by CalRecycle, we also highlight specific issues that render the proposed regulations inconsistent with other California laws, including Senate Bill 54 and Assembly Bill 1201. We also highlight specific issues that render the proposed regulations inconsistent with the available scientific evidence, BPI's experience, and CalRecycle's duty to protect human health and the environment. Considering BPI's expertise and authority as set forth above, CalRecycle must meaningfully grapple with BPI's comments on the proposed regulations. See, e.g., Gov't Code § 11346.9(a)(3); Sims v. Dep't of Corr. & Rehab., 216 Cal. App. 4th 1059, 1071– 74 (2013) (regulations invalidated for "substantial failure" to comply with APA procedural duties, including failure to address alternatives)

Response to O-83-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-83-2

Section 18980.1 (Definitions)

We support and appreciate the changes that CalRecycle has made to two different definitions, namely the definitions of: (1) "alternative collection"; and (2) "food service ware". The changes to "alternative collection" now more expressly include mail back collection programs and other extended logistics collection programs. The changes to "food service ware" now appropriately include food-associated items that facilitate disposal of food-contact items, such as cup sleeves which facilitate the disposal of cups. We continue to request revisions to the definition of "plastics or polymers" and the addition of a separate definition of "polymers." **We ask that the definition of "polymer" in ASTM D883 is included in this regulation to reflect both the intent and the language in existing statute.** It should be noted that the ASTM D883 definition is referenced for the meaning of "polymer" in both ASTM D6400 and ASTM D6868.

It is imperative that CalRecycle define “polymers” separately from “plastics” for the purposes of this regulation. This is a concern because plastics are articles made from a small subset of polymers—polymers are simply long-chain molecules and can be found in nearly every item in our daily lives. By not defining “polymers”, the very narrow exemption to meet safety and performance criteria in current statute enshrined as PRC 42356.1(d) is now a very wide one. Polymers are likely included in most certified compostable products, especially fiber-based products, to some extent; this is why we have a certification to ASTM standard specifications to ensure that they are biodegradable, do not negatively impact disintegration, and do not add any toxic effects.

Should this definition not be properly addressed, the inevitable result is that companies that do all the careful product design and testing to ensure integrity of the resulting compost will have to compete with companies that do not do this under SB54. It will result in consumer confusion, as the statute says one thing, but non-compostable products could be considered eligible to be labeled compostable under SB54, and receive any economic benefit associated with that claim. Should those products end up in a composting facility, filled with untested and unknown components, the integrity of soil in California is at risk. As such, the proposed regulations need to include a specific definition of “polymers” and the definition of “plastics or polymers” should refer to this definition of polymers.

Rationale provided by the department in the ISOR document misunderstands the statute in multiple ways. First, the need to test and certify products with polymers is not limited to the “rate of composting.” The relevant ASTM standard specifications include requirements for ecotoxicity and constituents, in addition to biodegradation and disintegration, all of which are necessary to protect the quality of the resulting compost. Furthermore, the claim that fiber is itself a polymer does not change the need for other “incorporated” polymers to be tested. It has always been intended and understood that the exemption for paper and fiber-based products without polymers applies only to an extremely narrow subset of products such as wooden stir sticks. This is also why certification entities like BPI require testing for countless uncoated paper and fiber products, to prevent persistent and/or toxic elements from being introduced into compost. CalRecycle cannot ignore the clear purpose of the law for the purpose of drawing an arbitrary distinction between product types.

Response to O-83-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment O-83-3

Section 18980.2. (Categorically Excluded Materials)

We appreciate and support the changes to require an entity to “explain why no reasonably
possible alternative packaging or packaging component is available.” to achieve categorical exclusion. Because there are many compostable alternatives to otherwise

non-recyclable, non-reusable packaging and packaging components, this change keeps incentives in place for material and design innovation and for producers to move towards
more sustainable packaging designs over time, including compostable food packaging that
could help drive food waste diversion and reduce contamination.

Response to O-83-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process, so no further response is necessary.

Comment O-83-4

Section 18980.2.2 (Exclusion of Certain Types of Packaging)

We are concerned about the exclusions for “de minimis” elements as the language is inappropriate and vague as it relates to compostable products. Unlike recyclable products that can often be deconstructed to remove non-recyclable components, any “size” or “weight” of non-compostable components within covered products, regardless of “weight or volume,” can persist as a contaminant in a compost pile. Fortunately, SB 54 references existing California law (PRC Chapter 5.7), including standard specifications such as ASTM D6400 and D6868 that already set pass/fail criteria to prove the performance of compostable items. This includes testing for biodegradation, which is a microscopic process and cannot be measured in a compost facility but rather requires laboratory testing, in addition to separate laboratory testing for ecotoxicity. ASTM D6400 and D6868 are the appropriate standard specifications, and an element should be considered “de minimis” only if it complies with these standards.

We therefore request that all mention of “composting” and “compostable” be removed from this de minimis allowance, and that components small in weight and/or size are adjudicated as part of a whole product, as covered by existing law designed for this purpose. Alternatively, we request that the relevant provisions be revised to clarify that an element be considered “de minimis” only if the whole product still complies with ASTM D6400 and D6868. Without one of these corrections, the applicable provisions create uncertainty and allow for products to be considered compostable for purposes of the proposed regulations even if they do not meet these strict standards that ensure such products do not cause harm to human health or the environment

Response to O-83-4

CalRecycle rejects this comment for the reasons provided in response to comment B-14-3.

Comment O-83-5

Section 18980.4 (Responsible End Market Criteria) Statute affirms that responsible end markets must be defined “in a way that benefits the environment and minimizes

risks to public health and workers." How can individual compostable items be specified to have different end market requirements when they are composted in a mix together with food scraps and other feedstocks? Compostable products are not typically separated out by type into distinct batches of compost, unless CalRecycle recommends that such bifurcation will be conducted with funding from this program. We're also concerned that compost facilities, as end markets, are not required to provide the conditions necessary to responsibly process covered compostable products into a stable and mature finished compost. We explain solutions to these unsupported and irresponsible declarations below.

First, the term "biologically decompose" as applied in both section 18980.4(a)(4)(B) and (C) continues to be used in a way that is unclear, unsupported, and undefined, despite multiple requests remove this term. ASTM standard specifications D6400 and D6868 already required by California law provide clearly defined and scientific criteria for biodegradation, making this "biologically decompose" term unnecessary and problematic. What's needed are clear criteria for composters to align conditions for the acceptance and processing of compostable plastic products, such as are outlined in the field test methods ASTM D8618 and D8619. Additionally, section 18980.4(a)(4)(C) does not appear to require items comprised of fiber or paper substrates (that may contain persistent polymeric components) to fully break down, creating unequal treatment of material types that not only betrays the underlying science of compostability, it also betrays PRC Chapter 5.7 of California law that requires paper and fiber products containing any plastic or polymer to undergo testing and certification. Removing the entirety of section 18980.4(a)(4)(B)-(C), including "fully biological decompose," solves this.

Furthermore, while a "marketable" compost product as described in section (C) might ensure proper pathogen reduction, etc., the term is insufficient for ensuring conditions necessary for compostable products to break down. To the extent that CalRecycle does not change these provisions to require compost conditions to be suitable for breaking down certified compostable products, and require compost to stable and mature compost, not just marketable. By not establishing relevant criteria, CalRecycle is risking substantial harm to the environment, and acting contrary to the text and principles of SB54. We request that this section 18980.4(a)(4)(B)-(C) therefore be removed.

The solution is luckily straightforward, as the recently published field-testing test methods
ASTM D8618 or D8619 provide clear ranges of operating conditions, based on general practices for composting (that aren't unique to compostable products) and clear thresholds for compost stability and maturity. By simply requiring composters to submit an ASTM D8618 or D8619 test report to show that suitable operating conditions are met, a stable and mature compost is produced, and compostable products can break down. This will ensure that composting facilities receiving funding are designed and operated to manage certified compostable products in the program and therefore are "responsible." If the department does not adopt this requirement, it must explain its

reasoning and provide a separate set of requirements to ensure that end markets for covered compostable products are capable of responsibly processing them.

Finally, the ISOR incorrectly states that certified compostable plastics cannot be a “recycled organic product,” even though by definition compostable plastics are made of organic carbon that is fully consumed by microorganisms, as evidenced by biodegradation testing that counts carbons, just like other compost feedstocks.

Response to O-83-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), 42051.1, and 42060, and the recommended changes are not necessary to the implementation or enforcement of the Act. To the extent this comment suggests that the different standards in sections 18980.4(a)(4)(B) and (C) of the proposed regulations are inappropriate or should otherwise be made similar, see the response to comment B-6-5. Furthermore, to the extent this comment suggests additional support or investment may be needed to ensure the standards of sections 18980.4(a)(4)(B) or (C) can be satisfied, see again the response to comment B-6-5. To the extent this comment recommends revising or clarifying the "biologically decompose" standard, no change is necessary. That term, as it is used in both section 18980.4(a)(4)(B) and (C), has a plain and clear meaning consistent with intent of the Act and with CalRecycle's authority under PRC section 42041(ad). See the response to comment O-75-12. Because this standard is clear, consistent, reasonable, and within CalRecycle's authority, no change to the proposed regulations—including a reference to ASTM standard specifications—is necessary. Additionally, to the extent this comment might suggest that section 18980.4(a)(4)(C) conflicts with Chapter 5.7 (commencing with PRC section 42355), no change is necessary for the reasons provided in response to comment O-91-8. To the extent this comment suggests section 18980.4(a)(4)(C) only requires that compost be marketable, and is insufficient for ensuring compostable products break down, no change is necessary. Along with the marketability requirement, section 18980.4(a)(4)(C) requires that the applicable covered material must biologically decompose. For the reasons expressed above, this standard is sufficiently clear to ensure that the relevant covered materials break down in a manner consistent with the Act and necessary to protect the environment. The current language of sections 18980.4(a)(4)(B) and (C) has incorporated the feedback of various interested parties and strikes an appropriate balance between protecting the environment and establishing a reasonable opportunity for compliance. Finally, regarding the ISOR's characterization of plastic substances, that is a semantic issue only: The term "recycled organic product," as used in the proposed regulations, refers to the three things listed in section 18980.1(a)(20), not to such plastics. Neither the ISOR nor the proposed regulations purports to characterize plastic substances or "certified compostable plastics" for any other purpose.

Comment O-83-6

Section 18980.11.1. (Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers)

Section 42060.5(b) of SB 54 allows the department to grant exemptions for local jurisdictions or service providers that provide written showing that they cannot accept or process specific covered material because of "specific local conditions, circumstances, or challenges." We support that an extension or exemption request must consider "program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; and transportation safety." However, we'd further request that the local jurisdiction or service provider demonstrate that it has issue and considered requests for proposals (RFPs) to support any claims of technological or economic limitations that cannot be sufficiently funded by the program. We also remind the department that all lawfully labeled compostable products are tested and certified based on the same conditions. Therefore, a local jurisdiction or service provider cannot request an exemption for one material type, but not another, based on local conditions.

Response to O-83-6

Comment rejected. The additional requirement that the commenter proposes would be an unnecessary burden. The premise of the commenter's proposal is that evidence cannot establish impracticability where a local jurisdiction or recycling service provider has not solicited proposals related to collection of the covered materials at issue. That premise is false. While the failure of such solicitation might be highly relevant to establishing impracticability, the absence of one does not, on its own, establish the opposite. CalRecycle can consider the lack of a request for proposal in its evaluation of impracticability, but precluding a finding of impracticability in all instances where one has not been issued is unduly restrictive.

Also, the commenter's "remind[er]" that "all lawfully labeled compostable products are tested and certified based on the same conditions" is erroneous. There is no current requirement that a product labeled "compostable" be certified. Whether the commenter is correct that an exemption for certain materials necessarily is justified for others need not be addressed in the proposed regulations. The merits of exemption requests, including the scope of granted exemptions, are necessarily a case-by-case matter.

CalRecycle further rejects this comment for the reasons provided in response to comment O-83-6.

Comment O-83-7

On Accreditation Requirements for Third-Party Certification Entities

We would like to strongly reaffirm our comments submitted in 2024 that requiring ISO 17065 is a robust and appropriate accreditation for certifying bodies, but this is not

commonplace for most global certifiers in the compostability space today. Certifying bodies will need time to ensure relevant ISO 17065 accreditation is in place, and product manufacturers will subsequently require time to gain new certificates that are accredited. Therefore, BPI recommends a staggered implementation timeline to ensure producers selling covered compostable products can continue to be compliant in the California market. BPI proposes the following timeline for accreditation requirements:

• By January 1, 2028: Certification bodies must be ISO 17065 accredited with testing performed by labs that are either ISO 17025 accredited or audited to the requirements of ISO 17025.
• By January 1, 2031: Producers selling covered compostable products must have certificates displaying the ISO 17065 accreditation.

CalRecycle must address this comment to adhere to the requirements of the California Administrative Procedures Act. *See Mountain Lion Found. v. Fish & Game Comm'n, 16 Cal. 4th 105, 113–14 (1997).*

Response to O-83-7

CalRecycle rejects this comment for the reasons provided in response to comment B-36-8.

Comment O-83-8

Finally, while we support language to ensure no collusion or conflicts of interest between certification entities and laboratories, we feel strongly that the language must include a prohibition of ownership in all testing entities, including and especially composter/field sites. As of this writing, there is only one national company offering commercial field testing as a service in the U.S., the Compost Manufacturing Alliance (CMA). CMA is a for-profit organization that lists compost facilities that also serve as field testing sites as partners, potentially with ownership stake. This presents an egregious conflict of interest, with little to no oversight into the co-managed field testing and certification process. We continue to request the following language modification:

"Without limitation, the entity shall be deemed not to satisfy this requirement if any of the following are true:
(A) It holds any ownership interest, whether direct or indirect, in any laboratory or site that conducts testing on which its certifications are based, conducts the testingitself, or is the producer of any product subject to the required certification requirement."

Please reach out with any questions or concerns.

Alex Truelove

Response to O-83-8

Comment rejected. As written, the proposed regulations robustly protect against the conflict of interest that would present any time an entity issuing certifications

is also conducting testing. For example, 18981(b)(1) makes clear that testing must be conducted by an "independent laboratory," so no change is needed in (b)(1)(A) to forbid the certifier from conducting the testing itself. The commenter's suggestion to refer to "the producer of any product subject to the . . . certification requirement" would be inappropriate because the term "producer" has no definition in context of section 18981, which implements Public Resources Code section 42357(g)(1)(A). That statutory provision relates to labeling restrictions applicable to all products and materials sold or distributed by anyone in the state, not just "covered materials" sold or distributed by "producers."

O-84: City of San Diego (Jennifer Ott)

Comment O-84-1

The City of San Diego (City) Environmental Services Department appreciates the opportunity to comment on CalRecycle's proposed regulatory language for implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).

The City operates the Miramar Landfill and Greenery composting facilities; has experience collecting trash, recycling, and organics curbside from over 285,000 customers; administers franchise agreements with 21 franchise haulers and franchise recycling facility agreements with Allan Co and EDCO; and manages waste reduction programs for communities and events across the City. As an operator, hauler, and local leader in waste reduction efforts, the City appreciates the opportunity to be a part of the formal rulemaking process.

The City supports the State’s work on SB 54 and its timely focus on producer responsibility and pollution prevention. It is exciting to be part of this groundbreaking legislation to reduce waste, cut plastic pollution, increase source reduction, and move California toward a more circular economy. We strongly support increasing producer responsibility for both implementation and funding.

At the same time, we recognize the complexity of drafting regulations for such a far-reaching law. Our concern is that certain provisions, as currently written, may unintentionally shift responsibility away from producers and weaken the program’s effectiveness. We offer the following comments and recommendations:

Response to O-84-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-84-2

ARTICLE 2: Covered Material and Covered Material Categories – Section 18980.2. Categorically Excluded Materials

This section outlines which packaging materials can be categorically excluded from the regulations.

As drafted, there is a general uncertainty for how this provision stipulates exemptions vs exclusions—a definition for both could provide clarity. Additionally, this provision appears to allow broad exemptions for a wide range of food packaging materials if they are tied to the Food and Drug Administration (FDA) or the Food Safety Modernization Act (FSMA) requirements for microbial control, shelf stability, or structural integrity.

For example, the following packaging could all reasonably qualify as excluded:

- Barrier films used as primary food contact layers;
- Glass jars and metal lids used for pasteurization or sterilization;
- Kraft board boxes and corrugated cases used to protect inner packaging;
- Tamper-resistant seals.

This interpretation risks exempting most primary and secondary food packaging, leaving only limited categories of convenience or display packaging in scope. Such an outcome would substantially reduce the impact of SB 54 on packaging reduction and recycling, particularly in the food sector.

Recommendations:
To ensure SB 54 achieves its intended environmental outcomes while respecting food safety standards, the City recommends:

1. Narrowing Exemptions—Under FDA/FSMA requirements, exemptions should apply only to packaging components that are strictly necessary for food safety, microbial control, or structural integrity.
2. Differentiating Safety-Driven vs. Convenience-Driven Packaging – Packaging that serves a direct safety function (e.g., barrier films, tamper seals) may qualify for exemption, while convenience-driven or redundant packaging (e.g., multipack sleeves, decorative wraps, shipping cases) should remain within scope.
3. Providing Clear Case Examples—CalRecycle should publish guidance with real-world examples to illustrate the distinction between exempt and non-exempt packaging formats so that producers and jurisdictions can consistently align compliance efforts.
4. Avoiding Overly Broad Exemptions – Without careful differentiation, exemptions could unintentionally apply to the majority of packaging, undermining the goals of SB 54.

Response to O-84-2

Comment partially accepted and partially rejected. CalRecycle accepts this comment to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

CalRecycle otherwise rejects this comment. Regarding the suggestion that 18980.2(a)(2) should only apply with respect to "food safety, microbial control, or structural integrity," that limitation would contravene Public Resources Code section 42060(b)(1) and (2), which do not limit the relevant conflicts to those concerning such issues. Regarding the suggestion to implement a framework differentiating between safety- and convenience-related packaging features, CalRecycle rejects that suggestion for the reasons stated in response to comment I-33-3. Regarding the request for "case examples," that is not a proposed change to the regulation, and no regulation is necessary for CalRecycle to publish case examples.

Comment O-84-3

ARTICLE 2: Covered Material and Covered Material Categories – Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware

This section addresses how reusable and refillable packaging can be excluded from covered material categories. The current wording risks unintentionally excluding innovative curbside collection programs for reusables, limiting flexibility for jurisdictions and undermining progress toward circular systems.

<u>Recommendations:</u>

1. Subparagraph (4)(A): The regulations may unintentionally exclude curbside collection of reusable packaging from meeting convenience standards. Many jurisdictions are actively exploring and piloting curbside collection of reusables, and this should be recognized as a return modality eligible for CAA investments.
2. Propose Language Addition: Subparagraph (4)(C) – “In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied.”

Response to O-84-3

CalRecycle rejects this comment. The commenter suggests that curbside collection of reusable packaging should be sufficient to meet convenience standards. The proposed regulation does not preclude use of curbside collection of reusable packaging, but relying solely on curbside collection would mean that items would be considered reusable even though many consumers would have no way to return the items. Moreover, it would be impracticable to accurately link the geographic scope of where a curbside collection to where items are sold or distributed, making it impossible to determine when a particular sale or distribution is of a reusable item. In contrast, the proposed 18980.2(a)(4)(A) concerns the infrastructure based on the location of sale of an item, ensuring that it is directly discernible whether the infrastructure requirement has been met for that item. Lastly, to the extent the commenter's concern applies to items obtained without visiting a remote location and directly delivered, the concern is misplaced because collection from the delivery location would be adequate pursuant to (a)(4)(B).

Comment O-84-4

ARTICLE 3: Evaluations of Covered Material and Covered Material Categories – Section 18980.3.3. Eligibility for Being Labeled "Compostable"

This section governs how packaging can be labeled as "compostable". Without a clear definition of "desirable organic waste," the rule could confuse consumers, increase contamination in organics streams, and burden local composting facilities with materials they cannot process.

Recommendation:
Subparagraph (c) (5): CalRecycle should insert a definition of "desirable organic waste." Without a clear definition, confusion may arise if packaging is marketed as "compostable" even though it cannot or will not be used for the recovery of desirable organic waste in practice.

Response to O-84-4

CalRecycle rejects this comment for the reasons provided in response to comment O-63-8. Moreover, the comment does not put forth any definition for CalRecycle to consider adopting.

Comment O-84-5

ARTICLE 4: Responsible End Markets – Section 18980.4. Responsible End Market Criteria

This section establishes criteria for what constitutes a responsible end market. As drafted, it could allow plastic flakes, nurdles, and pellets to count as "recycled," perpetuating microplastics and overproduction instead of driving true source reduction.

Recommendation:
Subparagraph (4) of paragraph (b): Flake plastics, nurdles, and pellets should not be considered recycled unless they are directed into a responsible end market. Allowing these forms to qualify as “recycled plastics” risks this cycle not being completed with the actual formation of new products from the recycled feedstock, thus undermining the goals of recycling in general and SB 54 specifically.

Response to O-84-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act. Section 18980.4(b)(4) of the proposed regulations defines end markets for plastic covered material in a manner that is consistent with the definition of "recycling" in PRC section 42041(aa) and with "responsible end market" in PRC section 42041(ad). To the extent this comment suggests section 18980.4(b)(4) fails to allow for the recovery cycle to be completed, see the response to comment O-56-10. Moreover, to the extent this comment suggests section 18980.4(b)(4) does not drive true source reduction, source reduction is addressed separately in the Act, including, for example, in PRC sections 42050(a) and 42057. Section 18980.4(b)(4) is not intended to address source reduction and is instead focused on the identification of end markets for plastic covered material. As such, no change is necessary.

Comment O-84-6

ARTICLE 8: Producer Responsibility Plan Requirements – Section 18980.8. Producer Responsibility Plan

This section outlines requirements for Producer Responsibility Organization (PRO) Plans, including how covered costs are determined, reimbursed, and communicated to local jurisdictions. However, the draft regulations only require PROs or Independent Producers to notify jurisdictions after a determination is made on covered costs, and they also place arbitration and mediation fees equally on jurisdictions, both of which risk creating financial burdens and limiting transparency for local governments.

Recommendation:

1. Paragraph (g)(8): Language should be revised to require PROs to notify jurisdictions/municipalities when a submission is received, regardless of whether the jurisdiction is already aware.
2. Paragraph (h)(4)(E): Language should be revised to require PRO to reimburse for arbitration and mediation fees if a determination is made in the jurisdiction’s favor.

Response to O-84-6

CalRecycle rejects this comment for the reasons provided in responses to comment O-13-23, O-15-6, and O-63-10.

Comment O-84-7

ARTICLE 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers – Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers

This section details jurisdictional requirements and compliance timelines. As written, the deadlines are unclear and too short, creating uncertainty and potentially forcing jurisdictions into costly infrastructure changes on unrealistic timelines.

Recommendations:

1. Paragraph (a): Clarify compliance deadlines if a PRO plan is submitted and approved before January 1, 2027.
2. Paragraph (c): The current one-year compliance timeline for changes to the Covered Material Category (CMC) list poses financial and infrastructure challenges. Recommend extending the compliance period to two years for local jurisdictions.

Response to O-84-7

CalRecycle rejects this comment. Section 18980.11(a) makes clear that, regardless of the date on which a PRO plan is submitted and approved, the date of approval is the date by which local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list.

With regard to the second recommendation, a period of one year balances the need to implement the Act as follows: a standard period longer than one year would delay the positive results expected from the change and would often exceed the period local jurisdictions reasonably require for updating their recycling programs, while a shorter period might be impracticable for a local jurisdiction or recycling service provider. Further, the ability to request an extension allows for added flexibility as CalRecycle may identify an effective date later than the publication date in cases where it anticipates those affected by the change may need a longer period to implement the update successfully.

Comment O-84-8

The City strongly supports CalRecycle's efforts to implement SB 54 and appreciates the opportunity to provide feedback. We urge CalRecycle to refine the exemption provisions

in Article 2 to ensure food safety needs are met without creating loopholes that undermine the legislation's environmental objectives.

Thank you for your leadership and commitment to reducing plastic pollution and advancing a circular economy in California. The City of San Diego looks forward to continued collaboration in the rulemaking process.

Please feel free to contact Jennifer Ott, Supervising Recycling Specialist at jott@sandiego.gov, 858-573-1285, if you would like to discuss any of our comments in more detail.

Sincerely, Andrea Deleon
Deputy Environmental Services Director
AD/JO/NV

Response to O-84-8

Comment rejected. The comment only makes a general suggestion to refine Article 2 and does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process.

O-85: StopWaste (Alameda County Waste Management Authority) (Michelle Fay)

Comment O-85-1

October 7, 2025

Submitted via Public Comment Form

Subject: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act - Comments on Proposed Formal Draft Regulations released August 22, 2025

Dear CalRecycle,
This letter is in response to the formal draft of the SB 54 regulations released on August 22, 2025. We appreciate CalRecycle's responsiveness to several concerns and recommendations that were raised by local government and other stakeholders since the May 2025 draft. While we understand the need to finalize regulations given the regulatory restart, there are still several areas in the draft regulations that we believe do not fully align with the intent of the law. We offer the following comments and suggested regulatory revisions to help achieve alignment with the law's intent to accelerate progress toward circularity for packaging and foodware, protect ratepayers, and make local governments whole for costs associated with the law's implementation. Thank you for your consideration of the recommendations below.

Article 2: Covered Material and Covered Material Categories

Categorically Excluded Materials – 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] ... to prevent microbial contamination or to maintain the safety or structural integrity of packaging...."

We appreciate the revisions made in section 18980.2(a)(2) of the August 2025 (current) version of the draft regulations to clarify these exclusions only apply when "it is not reasonably possible to use other packaging or packaging components..." and requiring that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

The Department has stated this new categorical exclusion is intended to provide further clarity to statute section 42060(b), which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. StopWaste believes that should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Recommendation:
We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Should the Department determine section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

• Exclusion vs. exemption rationale – Entities should be required to explain why an exemption under section 2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for an exclusion vs. exemption and redirect requests to a more appropriate exemption pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):
"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines~~, and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" (as shown above), as federal guidelines are not always statutorily compelling.

• Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

We are also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6), and we oppose the regulatory change that exempts secondary and tertiary packaging of exempted and excluded primary packaging (18980(b)). We feel these changes undermine the intent of the authors and many stakeholders that negotiated this bill.

Response to O-85-1

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, which is substantively the same as this comment.

Comment O-85-2

Article 3: Evaluations of Covered Material and Covered Material Categories

Eligibility for Being Labeled "Compostable" – 18980.3.3

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC 42357(g)(E))

Section 18980.3.3(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste *"if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that*

directs or otherwise causes users of the item to use and discard it with desirable organic waste."

This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54 (if other criteria are met). The intent of section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. Section 18980.3.3(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. Further, while the SB 54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable.

Recommendation:

We recommend deleting the following sentence from section 18980.3.3(5) of the draft regulations:
"They must satisfy the requirement set forth in subparagraph (E) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code concerning association with the recovery of desirable organic wastes. ~~For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.~~"

Response to O-85-2

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

Comment O-85-3

Article 4 – Responsible End Markets

Alternative Recycling Technologies – 18980.4(d)

PRC section 42041(aa)(5) states that the SB 54 regulations "shall encourage recycling that minimizes *generation* of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall also include criteria to exclude plastic recycling technologies that *produce* significant amounts of hazardous waste." However, section 18980.4(d)(B) in the current version of the draft regulations goes against this statutory direction and shifts the standard from the *generation or production* of hazardous waste to its *management*.

The draft regulations enable — not exclude — technologies that produce significant amounts of hazardous waste, unlawfully shifting the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and "presents an imminent and substantial risk of harm to public health or to the contamination of the environment" does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in "substantial compliance with an applicable permit" does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste.

Additionally, the regulations still fail to address the statutory requirement to encourage minimization of the "generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." (The draft regulations currently only address hazardous waste generation/management.) We urge the Department to add provisions to address these critical concerns and meet the statutory directives.

Response to O-85-3

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-85-4

Compostability of plastic – 18980.4(a)(4)(B)

We appreciate clarification of the use of the term "fully biologically decompose," and reference to the ASTM D-6400 standard. We strongly support the Department's requirements for items "partially or wholly comprising plastic." Visible particles of compostable plastic in compost products hamper the marketability of those products. There is also a growing body of research showing compostable microplastic residue has detrimental effects on plant and soil health, and potentially human health.

Compostability of paper and fiber – 18980.4(a)(4)(C) and 18980.3(c)(4)

We support the regulatory approach to have different compostability standards for paper and fiber than for plastic. However, with the requirement for testing from an independent laboratory in section 18980.3(c)(4) removed, we are concerned the new proposed compostability standards for paper and fiber may allow for bad actors to maintain vague or otherwise insufficient documentation demonstrating that the fiber truly is "wholly derived from natural resources." Some form of verification of or attestation that a product is wholly derived from natural resources should be required to be submitted to the Department.

Response to O-85-4

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-59-5, which is substantively the same as this comment.

Comment O-85-5

Article 8 – Producer Responsibility Plan Requirements

Reimbursable costs – 18980.8(g)

We appreciate the addition to this section requiring that the PRO or Independent Producer "first" notify the local jurisdiction when costs are deemed covered for a recycling service provider. The notification of payments prior to issuance to service providers supports the transparency needed to help ensure that ratepayers do not pay for costs already covered by producer payments.

Response to O-85-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-85-6

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Local jurisdiction requirement – 18980.11(b)

PRC section 42060.5 states "local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material" contained on the statewide recyclable / compostable list. The current draft of the regulations provides that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities."

StopWaste believes that including the requirement to also transfer recyclable and compostable covered material goes beyond the statutory requirement for local jurisdictions. This framing also makes it difficult to attribute violations to the correct party, muddying the distinction of where the enforceability of a jurisdiction for a violation of this requirement ends and the point at which that responsibility transfers to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what's expected for compliance and how compliance will be determined.

Recommendation: Delete "~~and transfers it to responsible end markets directly or to intermediate supply chain entities.~~"

Response to O-85-6

CalRecycle rejects this comment for the reasons provided in response to comment I-59-7.

Comment O-85-7

Article 13: Enforcement Oversight by the Department

The draft regulations must recognize that SB 54's Enforcement Authority is limited to producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes under AB 939. Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively. Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they include the required recyclable or compostable covered materials in their programs.

We appreciate CalRecycle team's openness to feedback and continued dialogue to ensure the final regulations will provide a foundation for successful implementation of the law.

Response to O-85-7

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-59-8, which is substantively the same as this comment.

O-86: The Plant Based Products Council (Sydney Vandemeulebroecke)

Comment O-86-1

RE: California SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations; Changes to Proposed Rulemaking Comment Period

The Plant Based Products Council (PBPC) appreciates this opportunity to provide comments in response to the California Department of Resources Recycling and Recovery's (CalRecycle) 45day public comment period regarding the latest changes to the proposed rulemaking for Senate Bill 54 (SB 54) Plastic Pollution Prevention and Packaging Producer Responsibility Act regulations.

PBPC represents businesses large and small who are committed to advocating for a shift toward a more circular bioeconomy through greater adoption of plant-based materials supported by appropriate end-of-life infrastructure. We aspire to deliver a future based on renewable goods, improving global resource efficiency to meet the challenges of the 21st century while also providing environmental benefits through reduced greenhouse gas emissions and improved soil quality and water quality, along with improved recycling of food waste. Plant-based products and materials, including biobased plastics, are made from renewable sources, including agricultural commodities such as corn, hemp, soy, and sugarcane and can serve as alternatives to traditional consumer materials such as single-use plastics that are often derived from fossil fuels.

Many plant-based products, including some food service packaging items, are compostable or recyclable. Through composting, these products provide valuable soil amendments, support carbon sequestration, and reduce methane emissions from landfills. As interest grows among consumers, brands, and retailers for environmentally beneficial packaging, compostable products are poised to play a crucial role. On the other hand, many plant-based products are designed with recyclability in mind, allowing them to be integrated into existing recycling streams. These approaches enhance the environmental value of plant-based products as they can reduce waste and promote resource recovery.

We appreciate that CalRecycle took industry feedback into account and incorporated some recommendations that support the environmental goals of SB 54 earlier in the process. Meaningful improvements at this stage, however, are essential to allow success for this emerging industry and the positive impacts it offers to local economies and the environment. Thank you for your responsiveness to these priorities as we work together to foster an improved packaging ecosystem in California.

Response to O-86-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-86-2

Treatment of "excluded material"

We appreciate and support the new requirement that an entity must “explain why no reasonably possible alternative packaging or packaging component is available” to qualify for a categorical exclusion. This requirement ensures producers consider compostable or recyclable alternatives before seeking exclusions, helping to advance the use of more sustainable packaging solutions.

“The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations, rules, or guidelines, and explain why no reasonably possible alternative packaging or packaging component is available.”

Response to O-86-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-86-3

The exemption of certain fiber-based products from third-party certification

We reaffirm that all products should meet the same burden of proof testing for recyclability or composability, regardless of material composition. This ensures fairness and consistency across the industry. Further, we are concerned that CalRecycle's broad testing requirement, without a specified independent standard for assessing the absence of plastics or polymers in fiber products, may lead to inconsistent methods of testing and disclosure. Without clear guidelines and independent verification, companies may use varying approaches, which could impact the integrity of the process.

Response to O-86-3

Regarding "CalRecycle's broad testing requirement," CalRecycle cannot respond because it cannot discern any such requirement. If the commenter intended to refer to the certification requirement imposed by Public Resources Code section 42357(g)(1)(A) and addressed in section 18981 of the proposed regulations, that reference would be erroneous because that requirement does not concern the presence or absence of polymers in fiber products. If the commenter intended to recommend that the exemption from the requirement that material labeled "compostable" meet certain ASTM standards pursuant to Public Resources Code section 42357 be subject to a certification requirement, CalRecycle rejects that recommendation because it would contravene the clear intent behind enactment of section 42356.1(d). Through that that provision, the Legislature exempted products that do not contain "plastic or polymers" from the certification requirement pursuant to section 42356(g)(1)(A), without creating any new, parallel certification requirement. See, also, CalRecycle's response to comment B-36-4.

Comment O-86-4

Concerns with definitions
Renewable materials

We remain deeply concerned that CalRecycle has overlooked the fact that many plastic products derived from renewable materials, such as "wood, mycelium, algae, or plants like cotton, corn, sugar cane, or wheat," may contain trace amounts of materials from other sources. The requirement for products to be "wholly derived from natural resources" still unfairly disadvantages producers who are striving to create sustainable products made using renewable materials.

This approach not only penalizes companies working to reduce their environmental footprint but could also hinder efforts to develop and scale up sustainable solutions. By imposing stringent requirements, CalRecycle risks stifling innovation and limiting the production of materials that reduce reliance on fossil fuels and minimize waste. Using a fee structure to encourage the use of a portion of ~~predominantly~~ renewable materials rather than requiring purity will help drive the transition to a circular economy. The adoption of incentives and other policy tools could also drive growth and adoption of plant-based options.

"(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic covered material derived from renewable materials. (1) "Renewable materials," for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are wholly derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat."

Response to O-86-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42053 and 42060 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42053(e)(7) requires a PRO to subject plastic covered materials derived from renewable materials to a reduced fee relative to plastic covered materials derived from a nonrenewable material. Section 18980.6.7(j)(1) of the proposed regulations implements this requirement by clarifying that "derived from," for the purpose of this section, means "wholly derived from." This language offers clarification while supporting the overarching intent and purpose of the Act to encourage the reuse and recycling of covered materials. To the extent this comment is concerned that the current language of section 18980.6.7(j) will disadvantage producers who are striving to create products made from predominantly renewable materials, other statutory and regulatory provisions, including, for example, sections 42053(e)(2), 42053(e)(6), 42057(a), and 42057(d) of the Public Resources Code, already offer adequate incentives and rewards to producers striving to transition to

covered materials that are predominantly comprised of renewable materials. Therefore, no changes to section 18980.6.7(j) are necessary to the implementation or enforcement of the Act.

Comment O-86-5
Food service ware

We are still concerned that the updated definition of 'food service ware' excludes it from being classified as packaging. This creates unnecessary complexity and draws arbitrary distinctions that complicate producer responsibility assignments.

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

At the same time, we support the inclusion of language within the definition of 'food service ware' covering items "designed specifically for use in conjunction with food service ware items," as this appropriately captures food-associated products such as cup sleeves alongside cups and facilitates their co-disposal.

Response to O-86-5

Comment rejected. A clear distinction must be made between packaging and food service ware to avoid any potential confusion relating to the reporting of this covered material. Therefore, the recommended change is not necessary to the implementation or enforcement of the Act.

Comment O-86-6
Plastics and polymers

It is imperative that CalRecycle distinguish between "plastics" and "polymers" for the purposes of this regulation. Section 18980.3.3(c)(4)(A)(i) states that any product exempted from the compostable labeling requirements must:

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

However, polymers are not necessarily synonymous with plastics. Polymers are present in many common products, from soaps to lubricants, that cannot be made into plastics. To ensure accurate application of the regulation and the proper identification of persistent, non-compostable polymers used in covered material items, we respectfully request that CalRecycle adopt a separate and precise definition of "polymers." Using the recognized definition of "polymer" from ASTM D883 would align with both the intent and language of existing statute, including the references to ASTM D6400 and D6868 in defining "compostable."

Response to O-86-6

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment O-86-7

Realistic criteria for responsible composting end markets

We applaud the added clarification regarding the meaning of “biological decomposition.” However, we remain concerned about the requirements for full decomposition. CalRecycle requires entities seeking approval to ensure that compostable covered material and the newly introduced 'derivative material' will 'fully biologically decompose.' While we agree that composting entities should meet a standard, it is essential that this standard be clear and enforceable. As we mentioned in previous comments, we recommend replacement language to clarify that entities should demonstrate the ability to fully process compostable covered products, provide evidence of disintegration within their process, and confirm that the final compost is stable and mature. This section should also reflect AB 1201’s requirements for material neutrality; products of all material types must adhere to the same disintegration and biodegradation standards (ASTM D6400 and D6868) under equivalent facility conditions. These revisions are crucial to supporting responsible and sustainable end markets for compostable products in California. We appreciate your continued attention to this matter and your responsiveness to industry feedback.

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

Response to O-86-7

CalRecycle rejects this comment for the reasons provided in response to comments O-75-12, B-6-5, and O-83-5. The current standard of proposed section 18980.4(a)(4)(B) is reasonable, clear, necessary, and consistent with CalRecycle's authority under PRC section 42041(ad), and no change is necessary to the implementation of the Act.

Comment O-86-8

Concerns regarding recycling certification standards

We continue to have concerns regarding the certification standard and the requirements established for an alternative certification for recycling. While we support the need for rigorous standards to ensure product integrity and environmental benefits, excessively burdensome requirements could hinder the adoption of renewable and post-consumer recycled materials and create barriers for producers striving to comply with the regulations. It is crucial that the certification process remains accessible and feasible to encourage broader participation in sustainable practices without stifling innovation.

Response to O-86-8

Comment rejected. The commenter erroneously states that the proposed regulations impose a "certification" requirement for "recycling." The proposed regulations do not do so. Rather, section 18980.3.4 concerns the express postconsumer recycled content validation provisions in statute. Those provisions only apply to the extent a producer responsibility plan includes source reduction credits for postconsumer recycled content under PRC section 42057(a)(B)(i) or uses credits against fees for producers that use postconsumer recycled content. Accordingly, no change is required in response to the commenter's assertion regarding "requirements established for an alternative certification for recycling." Regarding the commenter's more general reference to "the certification standard," the commenter does not make clear what that refers to. To the extent the comment refers to something other than a "certification for recycling" (which is not required, as explained above), it might refer to the third-party validation of postconsumer recycling content addressed in section 18980.3.4. However, the commenter does not explain how the proposed regulations might be modified to ensure that that there is a "certification process" that "remains accessible and feasible." In any event, the proposed regulations straightforwardly implement the statutory requirement of third-party validations. CalRecycle cannot relax or modify that requirement because it is set in statute, with the Association of Plastic Recycler's certification program cited as an acceptable program by default but allowing for CalRecycle to approve alternatives. Accordingly, no change is necessary.

Comment O-86-9

Concerns regarding De Minimis Composting Exceptions

We are concerned about the allowance of contamination in compostable streams through the inclusion of *de minimis* non-compostable components. Even small amounts of non-compostable materials within covered products can persist as contaminants in composting systems. We strongly urge the removal of “composting” and “compostable” from the *de minimis* allowance to protect the integrity of compost.

Response to O-86-9

Comment rejected. The commenter requests special treatment for allegedly "compostable" components. The comment provides no evaluation of the criteria established in 18980.2.2(b) to explain why they would not be sufficient—that is, why they would not, as written, preclude the components of concern from qualifying as de minimis. The criteria—in particular, subparagraphs (A), (C), (D), and (E) of paragraph (2)—address the commenter's concerns. Thus, no further changes are necessary to the implementation or enforcement of the Act.

Comment O-86-10

It is important for the SB 54 regulations to recognize the growing nature of the plant-based products industry and foster, rather than discourage their use. By minimizing barriers and establishing clear, achievable criteria for both compostable and recyclable products, the market for plant-based solutions can expand. Thank you for your consideration of these comments. Please contact me at james@pbpc.com with any questions.

Response to O-86-10

Comment rejected. No response specific to the commenter's submission is necessary. This closing paragraph summarizes the commenter's recommendations, to which CalRecycle has responded separately.

O-87: Western Placer Waste Management Authority

Comment O-87-1

CalRecycle Regulations Staff:

The Western Placer Waste Management Authority (WPWMA) appreciates the opportunity to comment on the revisions to the proposed SB 54 language, which, if approved, will require all single-use packaging and plastic food ware sold in California to be recyclable and/or compostable by 2032.

The WPWMA is a joint powers authority established in 1978 by the County of Placer and the cities of Lincoln, Rocklin, and Roseville (Member Agencies) that provides recycling and waste disposal services to the majority of Placer County. At the heart of the WPWMA's campus is a mixed waste materials recovery facility (MRF) designed to recover ***marketable*** recyclable materials from the entire waste stream to preserve space in Placer County's only active landfill, also owned and operated by the WPWMA. The WPWMA's facilities provide for environmentally protective and sanitary disposal of solid wastes and ensure that municipalities, businesses, and individuals continue to comply with state and federal laws related to the diversion of materials from landfilling. Placer County and the WPWMA are unique in that the established mixed waste system has, by design, the ability to collect every type of material, regardless of recyclability, and recover marketable recyclables from every waste stream – including places where

recycling bins are not typically located such as parks, gas stations, and more. As long as a viable market exists for a material, the WPWMA can recover it for recycling. The mixed waste system is also able to capture and recover materials not accepted in the majority of typical curbside recycling programs (e.g. doorknobs, carpet and other textiles, improperly disposed household hazardous waste, plastics 3 – 7, etc.). The success of Placer County jurisdictions and the WPWMA's mixed waste MRF in meeting and exceeding solid waste regulations should prompt CalRecycle to consider encouraging and supporting the implementation of mixed waste collection and processing systems throughout the state.

CalRecycle and local jurisdictions continue to spend an inordinate amount of time and resources trying to manage problematic waste streams that should be the responsibility of the producers of those products. While SB 54 is a good start, much of the proposed ignores the importance of corporate responsibility in reducing or eliminating problematic waste streams such as single-use plastics. Focusing on producer responsibility instead of burdening additional regulatory requirements on local jurisdictions could produce a more effective and meaningful result in reducing plastic packaging waste. The WPWMA believes the following sections of the proposed regulation are problematic or require changes before the goals of SB 54 can be achieved

Response to O-87-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it is preface to the commenter's substantive comments and does not suggest a specific change to the proposed regulations or raise an objection to the rulemaking process. To the extent that following portions of the submission suggest specific changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-87-2

1. Article 1 Section 18980.1 Definitions
"Alternative collection," as currently written, could supersede a local jurisdictions commitment under existing solid waste and recycling agreements, contracts, and/or flow commitments that have been established in good faith and that have been established due to a jurisdiction's responsibility for implementation of diversion mandates. Allowing collection outside existing agreements has the potential for that collector to "cherry-pick" materials, jeopardizing the feasibility of agreements that rely on a mix of materials for profitability; this could cause them to fail, leaving a gap in materials collected and diverted where a gap may not have previously existed. Allowing "cherry-picking" can also result in inconsistent collection of materials when the market value is low as there will not be an agreement in place to require acceptance, regardless of market price, nor would controls be in place to ensure minimum diversion levels are met. Alternative collection may be necessary in some jurisdictions in order to achieve the greatest diversion, however, to protect and preserve existing programs that are succeeding, we would ask that the PRO discuss alternative collection plans with jurisdictions prior to initiation so that the alternative method(s) is(are) conducted in a in compliance with existing jurisdiction agreements. We ask that the definition be revised as follows:

(2) “Alternative collection” means a program that collects covered materials, regardless of whether the covered material is discarded or considered solid waste, and is not “curbside collection,” as defined in subdivision (g) of section 42041 of the Public Resources Code, provided the alternative collection is not in conflict with local jurisdiction agreements, contracts, commitments, or franchises because it is not conducted by a local jurisdiction or recycling or composting service provider, or waste/recycling processor under contract with a local jurisdiction.

Response to O-87-2

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2, B-42-1, and O-47-2.

Comment O-87-3

2. Article 3 Section 18980.3.3 Eligibility to be Labeled Compostable “Desirable” organic waste should be defined as **readily compostable** green waste and food waste. As the WPWMA and other solid waste entities have noted to CalRecycle before, bioplastic food ware and “compostable” plastics are not actually compostable within the timeframes of commercial-scale composting systems and will continue to be managed as a “residue”, ultimately requiring disposal. As currently defined, “desirable” organic waste does not define the material based on compostability performance or compatibility with commercial composting processes, instead there is a loophole, where material is defined by the labeling and marketing practices associated with a material. To rectify the loophole, provide clarity, and align with generally practiced commercial composting operations, we ask that Section (c)(5) be revised as follows: (5) […] For purposes of this requirement, an item is designed to be associated with the recovery of desirable organic waste if it is readily compostable organic waste that is currently accepted and successfully processed in commercial composting facilities in California.

Response to O-87-3

CalRecycle rejects this comment for the reasons provided in response to comments O-63-8, I-59-3, and O-78-7. Moreover, the commenter incorrectly asserts that the proposed regulation defines "desirable organic waste." To the contrary, the proposed regulation describes what it means to be "associated with the recovery of desirable organic waste." It does not purport to deem any material itself "desirable" based on how it is marketed or labeled.

Comment O-87-4

We recommend disallowing items from being labeled as compostable unless they meet the following criteria:
• Materials are accepted by a majority of composting facilities in the state, and
• Fully degrade within the timeframes and conditions established by those facilities for compostable material

Response to O-87-4

Comment rejected. The commenter suggests that the proposed regulations prohibit "compostable" labels unless certain conditions are met. However, the statute does not authorize CalRecycle to regulate product labeling; CalRecycle is authorized to enforce Public Resources Code section 42050(b), but that statutory provision does not consider how products are actually labeled. In other words, CalRecycle does not enforce laws against deceptive labeling. Rather, CalRecycle considers whether covered material could lawfully be labeled "compostable" only for the purpose of 42050(b). If the commenter intended only to suggest that CalRecycle impose additional criteria for when it will consider covered materials eligible for being labeled "compostable" for purposes of Public Resources Code section 42050(b), CalRecycle rejects that proposal because the statute does not authorize CalRecycle to add to the criteria incorporated into statute (see, e.g., Public Resources Code section 42050(b) and 42061(d)).

Comment O-87-5

We would also recommend requiring field-testing data at California's commercial composting facilities to confirm compostability, not lab certifications and prohibit certification-based exemptions for determining compostability of bioplastic or "compostable" plastic food ware unless performance is verified under actual operating conditions.
SB 54's focus on requiring manufacturers to design single-use packaging and food service ware to be recyclable or compostable is problematic because these items are simply not compostable in current commercial-scale composting systems, thus composting should not be relied upon as a means of recycling for these items

Response to O-87-5

Comment rejected. CalRecycle rejects the commenter's proposal because the statute does not authorize CalRecycle to create new requirements for when covered material can lawfully be labeled "compostable." CalRecycle can only consider the criteria expressly incorporated into statute. (See, e.g., Public Resources Code section 42050(b) and 42061(d)).

Comment O-87-6

3. Article 3 Section 18980.3.5 Disposal of Covered Material

We recommend this section (Section 18980.3.5.(c)) be revised to allow energy generation and fuel production from materials beyond source-separated organic materials and the ability to recycle materials using technologies other than anaerobic digestion, including but not limited to gasification, pyrolysis, hydrothermal processing, and other technologies as they are developed and studied for environmental impacts that are acceptable in the state.

Additionally, it's contradictory to existing diversion methodology as considered by CalRecycle. At the time of this letter, CalRecycle has already given an Article 2

Determination to at least one thermal conversion or gasification processor for their methodology to be counted as “diversion” under SB 1383 regulations, and as written under the proposed SB 54 regulations, this recovery technology would be considered disposal, not diversion.

Furthermore, by limiting qualifying diversion methods within the state to merely anaerobic digestion of just source-separated organic material, it constrains innovation and disincentivizes potentially more scalable or cost-effective solutions that may emerge. WPWMA recommends that California reconsider this limitation to allow for other energy and fuel production technologies to count towards material diversion rates as this should improve the economics and help encourage the implementation of technologies to produce sustainable and beneficial products from California’s organic wastes and reduce reliance on landfills. We ask that the definition be revised as follows:

(c) Energy generation or fuel production, <u>except for methods approved by CalRecycle as diversion including but not limited to anaerobic digestion and thermal conversion.</u>

Alternatively, CalRecycle should commit to funding and technical support for the mass development of anaerobic digestion infrastructure in jurisdictions that lack such capacity, especially if the state chooses to continue to limit innovation and prohibit other conversion technologies from qualifying towards diversion.

Response to O-87-6

Comment rejected. The commenter proposes that energy generation and fuel production be considered recycling processes. However, Public Resources Code section 42041(aa)(2) expressly forbids those processed from being considered recycling. The treatment of processes as "diversion" under other laws is not relevant to the current statute, which only applies to covered material and does not forbid the usage of any process—it just does not consider them "recycling," which affects recycling rates and does not necessarily prohibit achievement of the rates required under Public Resources Code section 42050(c), which only applies to plastic covered material. The commenter's request that CalRecycle "commit to funding and technical support for the mass development of anaerobic digestion" is not a proposal concerning the proposed regulations and is not relevant to CalRecycle's authority under the statute they implement, so no further response is required.

Comment O-87-7

4. Article 4 18980.4(a)(4)(B) Responsible End Markets
The WPWMA recommends deleting or modifying the requirement in Section (4)(B) that covered materials comprising of “compostable” plastics “must fully biologically decompose.” Complete decomposition is not measurable under real-world commercial composting conditions, and the current requirement imposes an unrealistic standard compared to other recyclables. Instead, as noted previously for eligibility to be labeled compostable, compostable materials should be evaluated based on commercially achievable compostability standards under normal conditions and times. We

recommend this section be revised as follows: Covered material partially or wholly comprising plastic and intentionally included in the process used to generate a recycled organic product must be readily compostable, and the recycled organic product must compost within time, temperature, and other typical operational standards necessary to be sold into the marketplace and be free of residue or other incompatible materials such as fillers and additives commonly found in bioplastic material. Full biological decomposition of compostable plastic refers to the complete biodegradation and disintegration of the material under controlled composting conditions, resulting in its conversion to carbon dioxide, water, biomass, and inorganic compounds, with no visible, distinguishable, or toxic residues remaining after the composting cycle. The entity must neither dispose of undecomposed material intentionally included in the process nor send it to another entity that subsequently disposes of it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).

Response to O-87-7

CalRecycle rejects this comment. See the responses to comments B-6-5 and O-75-12.

Comment O-87-8

5. Article 4 Section 18980.4.1 End Market Identification

The WPWMA appreciates that the PRO is required to identify end markets and encourages CalRecycle to require the PRO to create local markets. CalRecycle should estimate the distance from a recovery facility that a material can be shipped before the environmental impacts associated with material transportation offsets the environmental benefit of recycling the material in the first place. The PRO should be required to cover shipping costs if general market conditions require a material to be shipped outside a specified radius of a recovery facility. To make meaningful progress in diverting materials from landfill disposal, CalRecycle and the PRO **must** participate in the development of local markets for these materials.

The WPWMA believes that end market identification should go beyond compliance documentation and actually promote the development of regional circular economies in the State. By integrating environmental impact thresholds for transportation and requiring the PRO to bear the cost of long-distance material shipments, these changes would incentivize investment in local reuse and recycling manufacturing infrastructure. Without such incentives and requirements built into the initial planning, the WPWMA believes that the environmental benefits of SB 54 risk being offset by emissions from unnecessary material transportation, and local jurisdictions may lack the economic support needed to divert covered materials from disposal effectively. We ask that this section be revised to add the following:

(a)(4) A PRO or Independent Producer shall prioritize the use of end markets located within a 250-mile radius of the recovery or processing facility, where feasible. The plan shall include a description of the steps taken to identify and develop such local or regional end markets, including partnerships with local governments, material processors, and manufacturers.
(a)(5) The plan shall include an analysis of the environmental impacts associated with transporting covered material to identified end markets, including estimated greenhouse gas emissions and fuel consumption. When transportation impacts are reasonably expected to outweigh the environmental benefits of recycling the material, the plan must identify alternative local options or justify the selection of more distant markets.
(a)(6) In cases where no responsible end market exists within the specified 250-mile radius, and material must be shipped to a more distant location to achieve compliance, the PRO or Independent Producer shall bear the transportation costs to such markets.

This suggested requirement (a)(6) ensures that economic conditions do not disincentivize the development or use of local markets for covered material.

(a)(7) A PRO or Independent Producer shall describe how it will contribute to the development of new or expanded local end markets for covered materials. This may include investment in market development programs, research and development, pilot projects, public-private partnerships, or technical assistance initiatives in coordination with local agencies and/or CalRecycle.

Response to O-87-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and the recommended changes are not necessary to the implementation of the Act. PRC sections 42051.1(c)(1) and (2) require a PRO to describe in its plan how it will meet the requirements of the Act, including how it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered materials achieve the requirements of PRC section 42050, and how it will support and achieve, and how the budget will fund, the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered materials to meet the requirements of the Act. Moreover, PRC section 42051.1(j)(1) requires a PRO to include in its budget all actions and investments to fund the budget and needs and investments identified in the needs assessments and all costs associated with the Act incurred by local jurisdictions, including costs related to the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market. Under the overall funding and budgetary structure of the Act, including PRC sections 42051.1(j) and 42053, the PRO is responsible for developing and implementing a budget and fee schedule that reflects all investments and financial support necessary to ensure the requirements of the Act can be met, including requirements concerning responsible end markets. Section 18980.4.3(a) of the proposed regulations implements these requirements by further specifying what

a PRO must include in its plan to support the establishment, expansion, and continued existence of responsible end markets, including how it will facilitate material recycling and assist end markets in satisfying the standards specified in section 18980.4 (18980.4.3(a)(2)) and how it will develop new responsible end markets for covered materials and explore alternatives for covered materials that do not have a responsible end market (18980.4.3(a)(3)). That plan is then subject to both review and comment by the public and advisory board and review and approval by CalRecycle. Consistent with the framework of the Act, section 18980.4.3 of the proposed regulations strikes an appropriate balance between establishing the minimum requirements a PRO must meet in compliance with its statutory requirements in developing and supporting responsible end markets and providing a PRO with sufficient opportunity and discretion, subject to CalRecycle review and approval, to develop an appropriate and adequate plan and budget. The language recommended in this comment would be overly prescriptive and would limit the PRO's discretion to develop a plan and budget that is afforded to it under the Act. Additionally, the proposed threshold of a 250-mile radius risks being unnecessarily rigid and arbitrary in its application across various jurisdictions. Rather, the proposed regulations as written provide the PRO with the appropriate flexibility and discretion to develop a plan and budget, including investments in responsible end markets. Therefore, no change is necessary.

Comment O-87-9

6. 18980.4.3 End Market Development
The WPWMA appreciates that the PRO is required to provide financial support to jurisdictions and recycling manufacturers, but it is currently unclear as to the amount and type of financial support. This section should be revised to ensure all plans and resulting efforts support broad, yet effective projects related to developing end markets and local circular economies are able to receive the critical funding to jumpstart this necessary development. We recommend that this section be revised as follows:

(a)(1) Provide financial support to end markets as necessary to develop responsible end markets and ensure that they continue to satisfy the standards specified in section 18980.4. The plan must specify, at a minimum, how the PRO or Independent Producer will identify where financial support is needed and decide whether to provide it. <u>The plan shall also identify anticipated funding timelines and the range of financial mechanisms to be used, including capital grants, infrastructure loans, public-private partnerships, and general investment pools. Financial support shall not be limited to a narrow set of projects, but may be directed towards facility construction, site acquisition, permitting, or other foundational development costs.</u>

(a)(2) […] The plan must specify, at a minimum, how the PRO or Independent Producer will identify and evaluate opportunities to provide such support and decide whether to provide it. <u>Financial support may include, but is not limited to, funding for:
- Infrastructure processing on publicly or privately owned properties intended for material recovery, recycling manufacturing, or reuse</u>

- Site preparation and building construction for sites intended for or manufacturers using recovered materials
- Research & development and pilot testing of novel or emerging recycling, reuse, or energy recovery technologies
- Material innovation that improves recyclability or displaces covered materials

(e) A PRO or Independent Producer shall prioritize investments that support the development of local and regional end markets and infrastructure. Plans must identify potential collaboration opportunities with local jurisdictions, public agencies, or community-based organizations and provide justification if such partnerships are not pursued.

The WPWMA appreciates CalRecycle's consideration of these comments and is happy to discuss further with CalRecycle staff to lead to a more practical, beneficial, and successful result in reducing single use plastic waste.
Sincerely,

_____
Scott Scholz
General Manager

Response to O-87-9

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1 and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act. PRC sections 42051.1(c) and (j) make clear that it is the responsibility of the PRO or Independent Producer, in its plan and budget, to establish and include the specific details of its funding allocations and investments to support the development of responsible end markets in a manner that is consistent with, and not disruptive of, the existing solid waste network providing services within local jurisdictions. Section 18980.4.3(a) of the proposed regulations provides additional clarification as to what the PRO or Independent Producer must include in its plan with respect to funding the development of responsible end markets, while preserving significant discretion for the PRO or Independent Producer to develop its plan and budget in a manner it deems appropriate and necessary to satisfy the requirements of the Act. The current proposed language of section 18980.4.3(a) therefore strikes an appropriate balance between offering clear guidance to a PRO, Independent Producer, and other regulated parties as to the general information that must be included in a producer responsibility plan and providing such entities with sufficient flexibility and discretion to allocate funding and investments as appropriate. The additional language proposed by this comment would unnecessarily limit the PRO's or Independent Producer's ability to exercise discretion and control over its investment decisions under PRC sections 42051.1(c) and (j) and is not necessary to effectuate the purpose of the Act.

O-88: Community Alliance with Family Farmers (CAFF) (Jennifer Fearing)

Comment O-88-1

We are commenting on these proposed regulations on behalf of Community Alliance with Family Farmers (CAFF), an organization representing over 8,000 of California's smallest and most vulnerable family farmers. We have worked for over 47 years to preserve family-scale agriculture and promote environmental sustainability, and work closely with growers throughout the state to build healthy soils and expand markets for high-quality compost.

CAFF broadly supports California's world-leading effort to curb the growth of single-use packaging and plastic food service ware. SB 54's extended producer responsibility framework holds the promise of reducing costs to residents and businesses, negative impacts on public health, and environmental degradation. SB 54 can and should incentivize packaging and foodware producers to source reduce materials and shift to materials that are reusable, recyclable, or compostable.

As SB 54 is implemented, CAFF urges regulators to support the need for California's compost to remain a strong responsible end market, by keeping it free of packaging and foodware that does not break down, leach toxic chemicals or additives, or break down into microplastics. A strong body of science validates concerns that farmers and composters have about the adverse impacts such waste will have on compost integrity and consumer confidence in compost created in California.

Agricultural Market: California's agriculture industry purchases **well over two-thirds of all compost sold in California**,1 making it the single largest and most promising end-market for the material. Use by growers—conventional and organic alike—hinges on product quality and we cannot risk introducing contaminants that jeopardize crop safety, farm certifications, or brand reputation.

Organic Compliant Compost: Food-safety and organic standards tighten every year under pressure from retailers, processors, and consumers. The vast majority of farmers now require written assurances that the compost they purchase meets NOP standards. Anything that threatens that compliance–especially visible plastic fragments or unverified inputs–effectively closes the door on the state's largest compost market. Last fall the National Organics Standards Board (NOSB) concluded a robust petition process where they considered–and rejected–a request to allow packaging and foodware in the NOP. A recently released analysis that the NOSB commissioned from the Organic Materials Review Institute (OMRI) reveals persistent concerns with packaging in compost. It does not appear that the NOSB is poised to reconsider inclusion of so-called compostable packaging or foodware in the NOP any time soon.

Toxicity Concerns: Compostable packaging and foodware often contain numerous chemical additives, some of which are toxic. Studies have found that cellulose and

starch-based compostable plastics can induce strong toxicity, and many samples contain thousands of chemical features, raising concerns about their safety.2

Environmental Impact: Despite being marketed as eco-friendly, compostable packaging and foodware can have a significant environmental footprint. Their production can involve substantial greenhouse gas emissions, and when disposed of in landfills or in compost, plastics can release methane, a potent greenhouse gas. A growing body of research3 highlights the environmental risks posed by microplastics in soil ecosystems. These materials often fail to fully degrade in real-world conditions, leading to the accumulation of persistent plastic fragments in agricultural soils. Once present, they can alter soil structure, reduce fertility, and disrupt microbial communities critical for nutrient cycling. Additionally, studies show that these microplastics can inhibit plant growth by affecting germination and biomass production. The persistence and ecological disruption caused by these fragments raise serious concerns about the widespread use of biodegradable plastics in agricultural settings.

Composting Challenges: Most packaging and foodware marketed as compostable are screened out and discarded by composters because they are indistinguishable from other packaging and foodware. There are very few industrial composting facilities with the technology, labor, and time to accommodate these materials in their compost. These bioplastics are a contaminant, and often are re-directed to landfills or incinerators, where they do not decompose as intended. Packaging and foodware marketed as compostable is still single-use that reinforces disposable culture. Expanding their allowable presence in organics bins diverts attention and resources from proven waste-reduction strategies, such as source reduction, durable reusables, and true circularity.

Conclusion
Allowing compostable packaging and foodware into California's composting system jeopardizes the state's largest compost market—agriculture. Farmers rely on clean compost to meet strict food safety and organic standards, and even trace contaminants like plastic fragments can disqualify compost for agricultural use. **Compostable plastics offer no nutrient value, often contain toxic additives, and frequently fail to fully degrade, leaving behind microplastics that harm soil health and plant growth.** This process only reinforces single-use habits rather than promoting true circular solutions. To protect soil, farmers, and the integrity of compost, these materials should stay out of the compost stream. We urge producers to focus on making their packages and foodware out of materials that an be successfully reused, refilled, or recycled.

In keeping with these concerns, CAFF supports the existing regulatory language under Section 18980.3 "Eligibility to be labeled compostable" and 18980.4 which defines "responsible end markets" for compostables. We urge you to resist calls from packagers and producers to inflict plastics into California's compost markets.

Thank you for considering these comments.

Response to O-88-1

Comment rejected. The commenter raises general concern over the quality of California compost and urge CalRecycle to "support the need for California's compost to remain a strong responsible end market." The commenter also asserts that "compostable packaging and foodware . . . should stay out of the compost stream." These remarks contain no identifiable recommended revisions for CalRecycle to consider. To the extent the commenter intended to propose that the regulations limit compliance with Public Resources Code section 42050(b) to recycling only, CalRecycle rejects that proposal because statute unambiguously establishes compostability as a compliance pathway for covered material.

O-89: Consumer Brands Association (Will Grassle)

Comment O-89-1

1. <u>Inhibitive Barriers for Molecular and Physical Recycling Technologies and Incomplete Environmental Assessment Criteria</u>

Issue:

While we appreciate previous updates to the regulations regarding this issue, and believe they are an improvement from previous drafts, we must still emphasize the necessity of access to a full suite of recycling technologies to achieve circularity. The regulations create barriers for the inclusion of non-mechanical (molecular) recycling technologies. This could preclude the use of some of these technologies and contradicts the intent of SB 54, which supports recycling innovation and the development of new systems to reduce plastic pollution.

Molecular and physical recycling technologies are essential for processing materials - particularly certain plastic types - that cannot be managed via mechanical recycling. Their inclusion is critical to meeting California's recovery and recycling goals, particularly for hard-to-recycle materials.

Recommended Solution:

To align with the statutory intent and enable transparent, consistent evaluation of molecular recycling technologies, we strongly recommend that CalRecycle rely exclusively on a third-party certification process based on relevant International Organization for Standardization (ISO) standards. In particular, we request CalRecycle focus on ISO standard 59014 in Section 18980.4.1. ISO standards provide a rigorous, science-based framework for verifying environmental performance across a range of criteria, including greenhouse gas emissions, life cycle impact, and sustainability benchmarks.

Response to O-89-1

CalRecycle rejects this comment, which recommends that CalRecycle rely on a third-party certification process in lieu of the provisions now in section 18980.4(d) of the proposed regulations. However, the commenter identifies no available third-party certification program, nor is CalRecycle aware of one, so none can be incorporated. No other change is needed to accommodate the commenter's recommendation that the regulations rely on ISO standard 59014. The proposed regulation already does so.

Comment O-89-2

2. <u>Compliance Measurement Period Is Unfeasible</u>

Issue:

Material usage data from calendar years of 2027, 2030, and 2032 will largely reflect what is on the market and the source reduction that has been achieved by January 1 of the respective reporting year. It would not be reasonable or possible for producers to report material usage data from a period any earlier than calendar year 2027. For example, if usage data from calendar year 2026 is required to prove compliance with the January 1, 2027, source reduction date, this would mean that producers would need to comply with SB 54's source reduction requirements by January 1, 2026, long before the approval of a PRO plan that is required to allocate the source reduction requirements among the various producers and potentially before the regulations specifying the details of the PRO-level source reduction requirements take effect. Moreover, they would have to have the relevant 2026 data ready to report immediately by January 1, 2027. Producers do not and will not have the information necessary to implement source reduction compliance any earlier than calendar year 2027, as they currently have about three months until January 2026, do not yet have finalized regulations or an approved PRO plan, and require a much longer lead time to develop, test, and implement packaging changes. The only way for producers to comply with the January 1, 2027, source reduction requirement that uses a material usage data time period earlier than calendar year 2027 might be to cease selling products in California for some period of time in 2026.

Recommended Solution:

Consumer Brands supports adding language to paragraph (2) of subdivision (d) of Section 18980.9.1 to specify that source reduction requirements that are required as of January 1, 2027, 2030, and 2032, are based on producer source reduction reporting using the measurement period of the respective calendar years of 2027, 2030, and 2032.

Response to O-89-2

CalRecycle rejects this comment, see responses to B-27-2, I-63-15, O-48-5, and O-41-4.

Comment O-89-3

3. Source Reduction Baseline Fails to Account for Continued Growth in Consumer Demand

Issue:

Under SB 54, the Producer Responsibility Organization (PRO) designs and finances system investments based on the statewide needs assessment and an approved program plan. Within this framework, source reduction operates as one of several compliance pathways for plastic covered material, with eco-modulated fees calibrated to objective environmental attributes. Producers should retain discretion to deploy source-reduction measures across heterogeneous product portfolios, including reuse, right-sizing, and material substitution, provided SB 54 performance metrics are achieved. Consistent with recent state frameworks, prescriptive package-design specifications should remain outside statute and be addressed through PRO fee modulation, technical design guidance, and plan requirements under CalRecycle oversight.

Unfortunately, the proposed source reduction baseline provisions establish a framework that will be unworkable for producers. Current projections indicate that packaging consumption will continue to rise annually through 2032, driven by macroeconomic and societal trends including population growth, the expansion of e-commerce, and increasing consumer demand for convenience.

These drivers are entirely outside the control and authority of producers subject to SB 54. Establishing a flat, static source reduction baseline without accounting for external market changes imposes an inequitable compliance burden on the regulated community. It sets an unrealistic expectation that producers must achieve absolute reductions in packaging use, even as overall demand and consumption fluctuate.

The regulations already acknowledge the Department's flexibility to adjust the baseline after the initial January 1, 2025, deadline. Specifically, paragraph (c) of Section 18980.9 directs the Department to update the already-established baseline using actual supply data that producers report. The Department should use that same authority and its rulemaking discretion to update the baseline in future years for the reasons discussed above. This would effectuate a more sensible implementation of the source reduction baseline. Without these adjustments, producers may be forced to pull products from the market for factors outside their control or else risk financial and reputational risk.

Recommended Solution:

Source reduction targets should be dynamically adjusted to account for projected increases in packaging consumption due to population growth, e-commerce expansion, and sales growth changes through 2032. Further, the PRO should be empowered to recommend appropriate adjustments to the baseline and targets, based on verifiable market data. This approach would ensure that compliance expectations are both achievable and reflective of the external factors shaping packaging demand. Further, for food-contact material, molecular recycling technologies must be permitted in addition to

mechanical recycling. Without the ability to have molecular recycling count towards source reduction, targets are not feasible.

In addition, CalRecycle should consider amending paragraph (1) of subdivision (b) of Section 18980.3.4 of the Formal Proposed Regulations by removing the requirement that the PRO to measure a producers increase in the absolute amount of postconsumer recycled (PCR) content used to a 2023 baseline in order to qualify for a source reduction credit. Measuring a producers' increase of PCR content based on a 2023 baseline does not recognize, and ultimately penalizes, producers who have proactively sought to make their packaging more sustainable through the use of PCR content.

Response to O-89-3

CalRecycle rejects this comment, please see responses to comments B-27-2, I-63-15, O-48-5 and O-41-4.

Comment O-89-4

4. <u>Allow Aggregated Compliance for Material Subtypes</u>

Issue:
Requiring disaggregated compliance across all subcategories of a covered material (e.g., rigid vs. flexible plastic) disproportionately penalizes producers using less-common materials and fragments compliance strategies.

Recommended Solution:
Permit aggregated compliance for SB 54 requirements at the material class level (e.g., all plastic and all paper and fiber). CalRecycle and the PRO may establish performance tiers or differentiated fee schedules within each material category to encourage optimization.

Response to O-89-4

CalRecycle rejects this comment as the requested revision to allow aggregated compliance at the broader material-class level is in excess of CalRecycle's current authority as it is inconsistent with SB 54's statutory structure and would undermine implementation of the source-reduction and recyclability performance standards established in section 42057(a) and 42051(c) of the PRC as it requires specified reductions and recycling rates for covered materials by category, based on distinct material characteristics and end-of-life management pathways. Further, this is also inconsistent with section 42040(b)(4) and § 42051(a)(4) of the PRC, which indicates that Department must determine covered material categories based on the material type, form, and management attributes to ensure that reductions and recycling improvements are measured within each discrete stream rather than aggregated across dissimilar material subtypes. Aggregating compliance at the higher "all plastic" or "all paper" level would eliminate the granularity necessary to verify that each CMC meets the statutory performance benchmarks. Thus, as indicated above, the comment's request is

neither authorized by statute nor practicable for implementation, and CalRecycle rejects this comment accordingly.

See, also, CalRecycle's response to comment O-77-5.

Comment O-89-5

5. Producer Definition Lacks Clarity and Creates Regulatory Uncertainty

Issue:
The current regulatory identification of a "producer" under Section 18980.1.1 lacks sufficient specificity to ensure predictable and consistent assignment of responsibility in complex supply chains. This ambiguity creates significant uncertainty for compliance planning and risks duplicative or inconsistent obligations across supply chain actors.

The definition of "producer" and the identification of the obligated producer as provided in Section 18980.1.1 are overly broad and do not adequately differentiate between distinct product and packaging categories or business models. As currently drafted, they fail to provide clear, operational rules for assigning producer responsibility in real-world scenarios where multiple parties may be involved in manufacturing, branding, importing, or distributing a covered material. This includes, but is not limited to:

- Private label arrangements, where ownership of the brand and manufacturing of a product or packaging may reside with different entities
- Food service and institutional supply chains, where distributors, co-packers, and end users may all handle unfilled or partially-filled packaging.
- Multi-brand platforms and retailers, which frequently act as intermediaries without direct control of product or packaging manufacturing.

The absence of material-specific rules of assignment and a clear point in the supply chain at which responsibility is triggered leads to confusion over who must enroll, report, and pay fees under the program. Without clarifying these roles, the regulatory framework could result in overlapping obligations, gaps in compliance, or disputes among supply chain partners, particularly for products distributed under non-traditional ownership or control models.

Recommended Solution:
CalRecycle should revise Section 18980.1.1 to incorporate a clear, hierarchical producer responsibility framework tailored to different product and packaging categories. Specifically, the regulation should:
a) Establish material-specific rules of responsibility that clearly define the point at which a product becomes a "covered material" subject to program obligations.
b) Create additional, distinct responsibility hierarchies for different packaging scenarios to reflect commercial realities and reduce regulatory ambiguity. Other hierarchies should include:

- Single-use food serviceware that is unfilled or not served with food: Responsibility should lie with the manufacturer or importer who first places this material into commerce in California.
- Pre-packaged food and beverage products: Responsibility should lie primarily with the brand owner of the product.
- Private label food and consumer goods: Responsibility should lie with the brand owner on the product label, or if absent, with the importer or first distributor.

Response to O-89-5

Comment rejected. The statute does not authorize CalRecycle to create different rules for different material types. To the extent the inherent differences between packaging and food service ware created ambiguity as to how Public Resources Code section 42041(w)(1) and (w)(2) could apply to them, section 18980.1.1 provides necessary clarity. Within those two types of covered materials (packaging and food service ware), however, there is no justification for the point at which material becomes "covered material" varying based on material. Similarly, regarding the general suggestion of "additional, distinct responsibility hierarchies for different packaging scenarios," CalRecycle cannot create hierarchies other than those inherently grounded in statute. For that reason, CalRecycle rejects the specific suggestion that unfilled food service ware should always lie with the manufacturer or importer who first places items into California commerce. Such a rule would ignore Public Resources Code section 42041(w)(1) and (w)(2) entirely; if the brand owner is in the state but the manufacturer is not, then the brand owner must be the producer, without regard to who first distributed it in the state. Regarding pre-packaged food and beverage products (to the extent any beverage packaging is not excluded by Public Resources Code section 42041(e)(2)(E)), the statute and proposed regulations already require the outcome sought: If the brand owner is in the state, it is the producer. Likewise, the proposed regulations also require the outcome sought concerning private label food and consumer gods: if the brand owner is in the state, it is the producer.

Comment O-89-6

6. **Compostable Packaging Framework Should Account for Material Innovation and Infrastructure Limitations**

Issue:

Limiting compostable materials to allowable agricultural organic inputs under the requirements of the United States Department of Agriculture National Organic Program excludes compostable polymers that meet ASTM D6400 standards and are accepted at industrial composting facilities. This artificially narrows eligibility and undermines market innovation.

Recommended Solution:

We understand this is governed by AB 1201 but are bringing the issue to the attention of CalRecycle during this comment opportunity and hope we can work together to harmonize the regulations and allow for innovation. Additionally, CalRecycle recently extended the deadline for compostable materials to meet the USDA National Organic Program standards under AB 1201. We trust that CalRecycle recognizes that to the extent the deadline under AB 1201 is extended, that the extension similarly applies to the definition of compostability under SB 54.

Response to O-89-6

Comment rejected. The commenter does not suggest any changes to the proposes regulations. As the commenter acknowledges, the criterion concerning allowable agricultural organic inputs is a requirement established by the Legislature, and CalRecycle cannot change or ignore it. Regarding the extension the commenter refers to, see CalRecycle's response to comment O-48-2.

Comment O-89-7

7. <u>De Minimis Threshold Needed for Partial-Plastic Composites</u>

Issue:
The approach to treating a component as plastic if it contains very low amounts of plastic is overly inclusive and does not distinguish between functional polymers and trace plastics used as adhesives or coatings. While progress has been made with changes to the de minimis component provisions, this still may result in the misclassification of non-plastic materials that are still recyclable and have excessive regulatory scope.

Recommended Solution:
Introduce a defined de minimis threshold of 5% plastic content by weight or volume for composite materials and exclude materials below this threshold from being classified as plastic. Delay producer reporting requirements for these materials until the PRO establishes an approved, clear classification methodology.

Response to O-89-7

Comment rejected. CalRecycle rejects the commenter's proposals for the reasons stated in response to comments O-76-15, B-30-2, O-82-7, I-62-7, and O-65-9.

Comment O-89-8

8. <u>Acknowledge Test Results Do Not Require a Malus</u>

Issue:
Subdivision 18980.6.7(h) would trigger a malus if an element of covered material "requires test results" according to the specified design guide. However, this misunderstands the purpose of testing under the guide, which is to further investigate whether a material's design will contribute negatively to recyclability. It is possible

through testing that the element will be found to be acceptable, and therefore it does not make sense to continue to subject it to a malus.

Recommended Solution:
Add the following sentence to the end of subdivision 18980.6.7(h) to ensure that materials that are tested and found to maintain recyclability are not penalized: "Notwithstanding the previous sentence, an element that passes the required test shall not be considered to make recycling more difficult."

Response to O-89-8

CalRecycle rejects this comment. See the response to comment B-47-4.

Comment O-89-9

9. Malus Fee Inappropriately Applies Proposition 65 Listings Without Considering Exposure Thresholds

Issue:
The proposed language in subdivision 18980.6.7(i) of the draft regulations would require a PRO to assign malus fees to producers based solely on the presence of chemicals listed under Proposition 65. This approach disregards the fundamental legal structure of Proposition 65, which is explicitly exposure-based, not presence-based. Specifically, it proposes that malus fees be assessed based on the presence of Proposition 65-listed chemicals in covered material, regardless of whether actual exposure would occur at levels that exceed the California Office of Environmental Health Hazard Assessment's (OEHHA's) established safety thresholds. As such, this regulatory approach is inconsistent with state law, undermines scientific standards for risk assessment, and could lead to penalties for materials that pose no significant risk as determined by OEHHA.

Recommended Solution:
To ensure alignment with California law and sound risk-based regulatory principles, we urge CalRecycle to revise Section 18980.6.7(i) to conform with Proposition 65's exposure-based framework. The following language is recommended:

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code at levels that result in exposure to consumers in excess of the No Significant Risk Level (NSRL) for carcinogens or the Maximum Allowable Dose Level (MADL) for reproductive toxicants, as established by the Office of Environmental Health Hazard Assessment (OEHHA).

This revised language ensures that the regulatory structure of SB 54 remains consistent with the statutory and scientific framework underpinning Proposition 65. It respects the role of OEHHA as the expert agency in toxicological risk assessment, avoids duplicative

or unjust penalties for compliant businesses, and maintains public trust in California's rigorous but science-based approach to chemical safety and environmental health.

Response to O-89-9

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-89-10

10. Lack of Guarantee for Recycling Information Updates

Issue:

The current final draft of the regulations proposes to omit the following final sentence of subdivision (b) of Section 18980.2.5 as compared to a previous version: "For example, the Department shall update the list if the list, as updated, would more accurately or completely reflect how distinct material types and forms are collected or processed separately or would accurately account for novel material types and forms." We are deeply concerned that this omission, as well as the additional language at the beginning of the subdivision, will limit the Department's ability and obligation to revise the Covered Material Category (CMC) List when significant new information about recycling becomes available. Recycling practices and outcomes are changing all the time, and we expect them to improve alongside and as a result of SB 54. It is critical that CalRecycle make timely updates to the recycling and composting designations in the CMC. It is also worth noting that CalRecycle is empowered to "publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms," pursuant to Public Resources Code Section 42355.51(d)(1)(B)(iii).

Recommended Solution:

We request restoration of the final sentence in subdivision (b) of Section 18980.2.5 as existed in a prior draft.

Response to O-89-10

CalRecycle rejects this comment for the reasons provided in response to comment O-82-35.

Comment O-89-11

11. Updating Covered Material List for Small Packaging Types

Issue:

The categorization of small material types should reflect current best practices for recycling design. The treatment of small packaging materials that are proven to be sorted and captured should be more flexible. Some new technologies allow for sortation of small materials, and the sorting potential test method developed by the Association of Plastic Recyclers (APR SORT-S-02) accounts for this. If the dimension defining packaging is a test or validation based on performance, APR SORT-S-02 is a better test for inclusion of small packaging that can be sorted and captured. This approach allows

for a performance-based approach vs dimensionality factor to deem recyclable and supports better capture. We appreciate that this standard was included in the CMC guidance CalRecycle released earlier this year; however, incorporating it directly into the regulations would provide producers with greater certainty.

Recommended Solution:
CalRecycle should incorporate use of the SORT-S-02 method into the regulations, potentially in Section 189802.5, to reinforce that small materials can be sorted and therefore considered recyclable through categorization into other appropriate CMCs.

Response to O-89-11

Comment rejected. No change to the regulation is necessary to establish that covered materials might be recategorized into a different covered material category, which might be a "recyclable" one. Nor is it necessary to incorporate any particular sorting protocol that might be relevant. There is no suggestion in section 18980.2.5 that CalRecycle will not consider certain relevant information (such as the relevance of a sorting protocol) or of any limitation on covered material being recategorized into "recyclable" covered material categories.

Comment O-89-12

12. <u>Recycling Instructions Should Be Considered for Detachable Components</u>

Issue:
Additional language was added to subparagraph (ii) of subparagraph (C) of paragraph (4) of subdivision (a) of Section 18980.1 to specify that a "detachable component" is defined by certain characteristic "regardless of whether the component is discarded attached to the other components." This additional language negatively impacts the recyclability determination for components that are made of recyclable material but are less than two inches by two inches in size, which on their own might not currently be considered recyclable due to their size but would be considered recyclable when reattached to the larger recyclable packaging. The regulations should adhere to the Association of Plastic Recyclers (APR) Design Guides, which require evaluation of attachments in conjunction with primary packaging (e.g., a bottle cap with the related bottle). Furthermore, APR's Design Guide recommends leaving caps on packaging when recycling to increase the capture of recyclable materials.

Recommended Solution:
To ensure that components made of recyclable materials that are instructed to be reattached to a recyclable packaging do not impact the recyclability of the packaging, we recommend adding language to paragraph (1) of subdivision (c) of Section 18980.3 to ensure that such a small size component would not render the overall package "non-recyclable."

Response to O-89-12

CalRecycle rejects this comment for the reasons provided in responses to comment O-39-5 and O-41-3.

Comment O-89-13

13. Include Exemptions for Charitable Organizations

Issue:
Consumer Brands reiterates the importance of an exemption for nonprofit organizations that meet the terms of Section 501(c)(3) of the U.S. Internal Revenue Code. Within the existing regulation language, a nonprofit organization that produces goods under its own brand or purchases goods from other for-profit organizations for the sake of donation would be required to financially contribute to the state extended producer responsibility program though the products are distributed to low-income individuals and families through foodbanks and other charitable organizations. These products are crucial for low-income families in California and throughout the United States. Requiring a charitable organization to fund an extended producer responsibility program creates an undue burden for these nonprofit entities, ultimately constraining the resources available for the individuals they support. Other state extended producer responsibility programs, including the systems established within Maine and Oregon, exempt nonprofit organizations.

Recommended Solution:
Consumer Brands recommends that CalRecycle adopt an exemption within its proposed regulations for nonprofit charitable organizations that meet the terms of Section 501(c)(3) of the U.S. Internal Revenue Code to avoid exhausting valuable resources that support low-income families and individuals within the state.

Response to O-89-13

CalRecycle rejects this comment as the requested change for additional exemptions are beyond the scope of the Department's rulemaking authority and exceed the statutory text regarding exemptions.

Comment O-89-14

14. Broaden Scope OTC Exclusion

Issue:
Paragraphs (2) and (6) of subdivision (a) of Section 18980.2 provide a categorical exclusion for over the counter (OTC) drugs. This exclusion is supported by the text of the law and should be preserved, as these products must meet stringent Food and Drug Administration (FDA) requirements that limit the ability to use certain packaging materials, source reduce packaging, or consider reusable packaging. There is a significant risk that if they are required to comply with the stringent SB 54 source reduction requirements, many OTC health product stockkeeping units (SKUs) may be eliminated in California, especially in smaller sizes. This would severely impact

consumer access to essential medications, exacerbating healthcare challenges for low-income California consumers. Without the OTC drug exclusion from SB 54 requirements, manufacturers will be forced to eliminate or upsize many of the affordable medical products upon which these Californians rely, forcing them into conservation mode to stretch their budget or to make sacrifices with their health.

Although Consumer Brands supports the categorical exclusion for OTC drugs, we are concerned regarding the new language in subparagraphs (A) and (B) of paragraph (6), which unnecessarily narrows the OTC drug exclusion to only medicines by removing OTC drugs that also make cosmetic claims, are soap, or contain sunscreen active ingredients. All FDA-regulated OTC drugs are classified as medical products under 21 U.S.C. 321(g) and should therefore be excluded from SB 54 requirements. The fact that some OTC drugs also provide secondary benefits (e.g., cosmetic, cleaning, or sunscreen) does not change the fact that they are OTC drugs and are considered medical products under 21 U.S.C. 321(g).

Recommended Solution:
Consumer Brands recommends that CalRecycle revert back to the language in the previous draft of the regulations, eliminating the new language in subparagraphs (A) and (B) of paragraph (6) pertaining to the OTC drug exclusion.

In addition to suggested changes to the proposed regulations, Consumer Brands would like to highlight areas within the proposed regulations that we ardently support and would like to see maintained.

Response to O-89-14

CalRecycle rejects this comment for the reasons stated in response to comment B-11-3.

Comment O-89-15

1. <u>Refillable/Reusable Design and Labeling Requirement Deletion</u>

Consumer Brands supports the previous deletion of paragraphs (4) and (5) of subdivision (a) in Section 18980.2.1, which removed from the regulations arbitrary and overly burdensome requirements for refillable and reusable materials. It is critical to preserve the deletion of these paragraphs, as they would have applied uniform requirements to the design and labeling of reusable/refillable packaging despite significant differences across product categories in packaging types and purposes. There are tens of thousands of product packages that are covered by SB 54, each with their own unique purpose and usage. For a refillable/reusable package to be successfully adopted by consumers, its design and marketing must be consumer-led and consumer-focused.

Consumers have different expectations across different types of product packaging, and producers must have the flexibility to be able to meet these varying expectations. Producers are best positioned to analyze and choose the most effective communication

and labeling to convey that a package should be utilized multiple times. For durability, different types of products are used and refilled at varying frequencies.

Overly prescriptive and uniform durability requirements do not consider the variability of product packaging usage and can have the unintended consequence of requiring producers to use more plastic than necessary to meet the arbitrary requirements that do not reflect real world conditions. Further, there are critical food-contact safety needs required to ensure product safety for materials intended to be used more than once. CalRecycle should take into account these needs.

2. Minimum Duration of Exemptions

The previous revisions to subdivision (g) of Section 18980.2 change the minimum duration for an approved exemption from one year to two years, providing a longer period of certainty for producers who may be granted exemptions. This revision provides greater certainty for producers and should be preserved. This change helps assure producers about the continued availability of an exemption for critical packaging materials. Making packaging changes and finding replacement materials can take substantial time and planning to ensure the viability, safety, and consumer acceptance for new packaging materials, often across a broad range of product categories. Producers need as much certainty as possible as to whether a material will be available for use in California. Without this, producers may be forced to remove products, including consumer staples, from the California marketplace while they find and qualify replacement packaging.

3. Regulations Should Exempt Packaging with Express Consumer Safety Considerations

We want to emphasize the need to protect the exemption for packaging for protein and thank you for addressing this issue in the current draft. Food-contact packaging used for products containing meat and poultry requires unique packaging for food safety, human safety, and product quality/durability. Packaging for protein can implicate health and safety concerns related to preventing pathogen transfer to those that handle the packages—consumers and recycling industry workers. Protein packaging can harbor bacteria, and while cooking destroys pathogens in the product the same treatment is not applied to recovered packaging. Introducing these materials into current recycling streams poses potential health risks to workers and the integrity of the recycling stream. Robust decontamination and processing systems must first be established before such packaging can be recycled safely. These packaging materials are regulated by the United State Department of Food and Agriculture (USDA) and FDA. For example, USDA Food Safety and Inspection Service (FSIS) instructs consumers to place raw meats in separate plastic bags to prevent leaked juices from contacting other groceries or surfaces, and further cautions against reusing any packaging materials associated with raw meat. Current USDA FSIS guidance also explicitly states that some types of meat contact materials are for “one-time use” packaging.

Given the necessary considerations for food safety, contamination, and the presence of pathogens, food contact packaging used for products containing meat and poultry

produced under the Federal Meat Inspection Act, Poultry Products Inspection Act, or Food Safety Modernization Act should continue to be excluded from the program requirements.

Thank you for the opportunity to comment on the latest draft regulations for SB54. Please do not hesitate to contact me if you have any questions regarding this request. I

Response to O-89-15

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-90: Coalition (Tony Hackett)

Comment O-90-1

Zoe Heller, Director
Department of Resource Recycling and Recovery
1001 I Street | Sacramento, CA 95814
RE: August 2025 SB 54 Proposed Permanent Regulations – Coalition Comments and Concerns

On behalf of a diverse coalition of advocates who have been engaged in the SB 54 rulemaking process in its entirety, we write to share our persisting concerns about the language as written. Given the unprecedented scale and complexity of this task, SB 54 presents a generational opportunity to transform how packaging is designed, collected, and recovered, and we are optimistic that CalRecycle will continue to work with diligence in moving this process forward.

That said, we are deeply concerned that the current draft regulations fail to incorporate or meaningfully respond to the substantive feedback we and many others provided throughout earlier workshops and comment periods. By disregarding critical recommendations from local governments, recyclers, and environmental advocates, CalRecycle risks weakening the enforceability and effectiveness of SB 54, as well as failing to fulfill its statutory obligations. These omissions threaten to undermine the core intent of the law—holding producers accountable, ensuring program transparency, and driving the systemic changes needed to reduce plastic waste and pollution.

CalRecycle cannot afford to squander this crucial moment. Our comments detail unresolved issues that have not been adequately addressed despite multiple iterations of draft regulatory text and public comment periods. Specifically, our major areas of concern revolve around allowable recycling technologies, the creation of unnecessary exemptions and loopholes, and the need for public transparency in data for deliberative decision-making. Each of these areas is foundational to the success of the overall program.

Also included here are suggestions (‘Attachment 1’) for the Department to issue a ‘Frequently Asked Questions’ plain-language resource that provides clarity on the recurring questions surrounding implementation. We look forward to working with you to resolve these concerns.

Response to O-90-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-90-2

Article II: Covered Material and Covered Material Categories

Categorically Excluded Materials (§18980.2.) Must Include Mandatory Sunset, Narrowing of Pathway to Exclusion’s Scope

FDA/USDA Exclusions Risk Swallowing Covered Materials

The revised draft regulations improve upon prior versions by requiring that packaging excluded under § 18980.2(a)(2) must be those for which it is not reasonably possible to use packaging that also complies with USDA or FDA rules or regulations. The regulations also establish a process where producers must submit the basis of their claim to CalRecycle, which will maintain a public database of exclusions. However, while this clarification narrows the earlier overbroad exemption, the provision still risks sweeping in far more materials than intended by statute.

The reliance on “guidelines” 1 as a basis for categorical exclusions is fundamentally flawed, because guidelines do not constitute law. This vagueness creates a boundless loophole where any informal memorandum, nonbinding policy, informal rule, or voluntary guidance document could be weaponized to exempt entire classes of packaging from SB 54’s requirements.

As drafted, this section could allow entire categories of food and agricultural packaging to be excluded simply because producers claim it is not “reasonably possible” to use compliant alternatives. Many of these packaging types already have recyclable or compostable options in practice and at scale.

We therefore urge CalRecycle to revise this section to:

● Require producers seeking such exclusions to provide detailed, verifiable justification subject to public notice and comment. Public deliberation on these exemptions/exclusions is a crucial tool in enabling adequate oversight of often opaque regulatory processes.

● Ensure that packaging with available recyclable or compostable alternatives cannot be categorically excluded simply because industry claims such

alternatives are inconvenient or less profitable.
● Without these changes, the FDA/USDA exclusion risks creating a loophole large enough to exempt the majority of food packaging—undercutting the recyclability and source reduction objectives at the heart of SB 54.

Response to O-90-2

CalRecycle partially rejects and partially accepts this comment as described in response to comment O-75-2, which is substantively the same as this one.

Comment O-90-3

Exclusions Must Have A Prescribed Sunset

When exclusions are granted, they should also be time-bound in the same way that exemptions are treated. The way that the current regulations are written would give producers *carte blanche* to find a permanent way out of the program, locking in current polluting packaging technologies and stifling future innovation. By having a process where they are forced to reapply for said exclusion, producers would be forced to reconsider alternatives on a continuous basis, rather than having an open invitation for indefinite use of their current packaging formats.

Response to O-90-3

CalRecycle partially rejects and partially accepts this comment as described in response to comment O-75-2, a portion of which is substantively the same as this one.

Comment O-90-4

Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1):
Reuse and Refill Standards Regressed and Became Far Too Lax

Lack of Product Standard Floor Might Enable a New 'Thicker Plastic Bags' Problem

Throughout this section, language that was once perhaps too lofty in its requirements has now been gutted to no longer include any quantifiable thresholds for measuring performance and defining "reusable and refillable.

" While we don't have our own perfect solution to offer, it is worth mentioning that recent historical precedent of the 'Thicker Plastic Bag Problem' underscores the need for some degree of clearly identifiable enforcement criteria lest packaging manufacturers just race to the bottom.

Following the passage of SB 270 and Proposition 67, California retailers were permitted to offer only reusable plastic bags that met minimum durability standards. These standards were soon found to be far too weak, unintentionally allowing producers to use

plastic bags as long as they were of slightly thicker plastic rather than switch to more sustainable alternatives as was intended.

The thicker bag problem should be a warning: if SB 54 permits minimal or nominal reuse claims, without rigorous criteria for refill infrastructure, number-of-use thresholds, collection systems, and post-consumer accountability, it risks replicating this failure at scale across packaging types; with the opposite legislative intent adding to, and not reducing, California's single-use disposable waste problem

This regulation is far broader in scope, so there are many more opportunities for disingenuous "reuse" designed to skirt the fees and recyclability requirements of the law. To avoid the repeat of this unintended consequence, CalRecycle must:

- Adopt stricter, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity.
- For consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status. The PRO plan should also identify a clear strategy for quantifying the amount of reusable and refillable packaging that is actually reused, as well as outlining steps that the PRO is implementing to maximize these numbers (including through deposits or other incentives).
- Packaging cannot be considered reusable if it doesn't realistically get collected and reused, and the label should reflect that.
- CalRecycle should also establish a process for adopting third-party certification requirements when they become available.

Response to O-90-4

CalRecycle rejects this comment for the reasons set forth in response to comment O-75-3.

Comment O-90-5

Exclusion of Certain Types of Packaging (§18980.2.2): Definitional Criteria and Public Process.

Expand Scope of Considerations Beyond Singularly on Process of Composting when Evaluating *de minimis* Exemptions

Today's regulatory language evaluates *de minimis* considerations in part on the basis of if a component or group of components makes "*recycling or composting more difficult* pursuant to subdivision (h) of section 18980.6.7.." This language specifically focuses on the ease of composting rather than on whether there is a contamination-free, quality end product. This language is unnecessarily problematic in previously unanticipated ways. For instance, a plastic liner or coating on a foodservice ware item wouldn't *necessarily* affect the composting process directly, but it would contribute to microplastic

pollution in soils and be an undesirable contaminant in the end product. This example and others like it represent an opportunity to open the floodgates to allowing unlimited product contaminants as long as they don't pose a risk to the general ease of composting. As such, we suggest that language be revised to widen the scope of scrutiny across multiple categories of potential impact, from process to product, ultimately to ensure uncontaminated soil that can be used with confidence on California commercial crops and in residents' community and home gardens

Response to O-90-5

CalRecycle rejects this comment for the reasons provided in response to comment O-75-4.

Comment O-90-6

Vague and Insufficient Definitional Criteria for Eligibility Need Further Detail

We remain deeply concerned that the proposed de minimis exemption is drafted in a way that continues to lack enforceable thresholds and opens the door to abuse. While the new text introduces a definition of "independent plastic component" and lays out a multi-factor test for whether a component is of *de minimis* weight or volume, the operative standards remain vague and subjective.

One major loophole is in the definition of an Independent Plastic Component. The new definition excludes coatings, films, stickers, and labels from being considered "independent plastic components." This could allow producers to continue using problematic films, foils, shrink labels, and barrier coatings while arguing they are *de minimis* because they are not separately detachable and thus 'independent components.'

These are precisely the materials that routinely contaminate MRF streams and frustrate recyclability and compostability, directly undermining the statutory requirement in PRC § 42050(b) that packaging be recyclable or compostable in practice and at scale.

The impact is the creation of a perverse incentive to deliberately fragment packaging into 'non-countable' subcomponents to strategically fall below the *de minimis* threshold. This risks creating a perverse incentive for packaging design to evolve toward more hidden plastics—small films, detachable liners, and coatings—that erode source reduction and recyclability goals, and frustrate the intent of the law.

While we recognize the need to exempt incidental elements not associated with harm to the environment or human health, the current proposal does not contain the necessary specificity to prevent abuse by ensuring these crucial parameters are respected. By removing objective criteria (such as the prohibition on chemical or thermal separation) and relying on vague, discretionary standards, the draft risks opening a backdoor for widespread noncompliance. Unless clarified, the *de minimis* provision may encourage a "race to the bottom" in packaging design, contrary to both the intent and the express requirements of SB 54.

Response to O-90-6

CalRecycle rejects this comment for the reasons stated in response to comment O-75-5, which is substantively identical to this one.

Comment O-90-7

[This comment code not used.]

Response to O-90-7

[Intentionally left blank.]

Comment O-90-8

Procedural Transparency Should Be Obligatory

The current version permits producers or PROs to submit exemption requests for *de minimis* designation with no clear public notice, stakeholder input, or third-party review process. Even with the Department's intent to publish approved components online and have other documents available under Public Records Act requirements, the regulations lack data transparency that is communicated to the public outside of the Department as an intermediary filter. To promote transparency and fairness, all exemptions must be handled through an open process with input from both the advisory committee and members of the public.

Response to O-90-8

CalRecycle rejects this comment for the reasons provided in response to comment comment O-75-6.

Comment O-90-9

Exemptions for Certain Covered Materials (§18980.2.4): The Exemption Application process must include public deliberation.

Exemption Process Should Immediately Be Public Record

The proposed exemption process for packaging based on "unique challenges for compliance " doesn't have any requirement that decisions be made in an open forum with input from the public. Despite subsection (d) of 18980.2.4 proclaiming that applications are "public documents subject to mandatory disclosure under the California Public Records Act," there is no mandated transparency in the regulations, and is instead reliant on the public requesting data. Given the wide range of possible applications, it is imperative that any proposed exemption only be granted with public input. Our recommendations for public deliberation include the following:

- The Department should only adopt exemptions at a duly-noticed public meeting, including, but not limited to, the monthly public meeting, after providing an opportunity for public comment.
- Additionally, adoption of any exemptions should become part of the public record, such that individuals can confirm which material exemptions are relevant and up to date.
- A component of information required for potential exemptions should be the type of recycling/processing used, such that communities disproportionately affected by certain technologies (contrary to the express intent of the legislation) have access to meaningfully engaging in the public deliberation process.

Response to O-90-9

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-75-7, which is substantively the same as this comment.

Comment O-90-10

Article III: Evaluation of Covered Material and Covered Material Categories Recyclability (§18980.3.): Audit requirements should be strengthened to avoid oversimplification.

Audits must be randomized and representative of the entire supply chain; must be strong enough to ensure compliance.

The regulations currently require annual audits of two intermediate supply chain entities and two end markets8 when evaluating participant producer compliance. It is unclear if two of each type of facility will be sufficient for a given material type, and a better approach might be to use percentages, along with a framework similar to that established in the SB 1383 Route Review requirements (Cal. Code Regs. tit. 14 § 18995.1), which requires jurisdictions to “have an inspection and enforcement program that is designed to ensure overall compliance with this chapter.” Additionally, a percentage-based approach would make more sense than a static number to ensure that audits sufficiently evaluate compliance with the regulations and represent different strata of the market chain itself. For instance, the regulations could require “visits to intermediate supply chain entities and markets that, respectively, collect, process, or recycle 75% of the material under investigation.” Having a flexible, percentage-based approach would ensure greater compliance and more certainty with regard to intermediate supply chain entities and end-markets that are fully responsible and receiving just scrutiny.

Response to O-90-10

Comment rejected. The suggestion to add a provision expressly requiring an "overall compliance with this chapter" requirement is unnecessary because the proposed regulations already have the effect that such a change would have: 18980.3(f)(1)(C) states minimum conditions that must be met (including the

numbers of visits required to certain entities), but the overarching express requirement is that audits and investigations must "ensure that the covered materials . . . continue to meet the requirements [pursuant to section 42355.51(d)(4) or (5)]." Regarding a percentage-based approach, that change would not necessarily add flexibility, but rather would change the nature of the minimum conditions that the PRO must meet. CalRecycle declines to take that approach because it would not necessarily improve the calibration between the scope of conducting audits and investigations and the proof required to reasonably verify compliance.

Comment O-90-11

Independent Third-Party Validation of Postconsumer Recycled Content (§18980.3.4): PCR content calculations must explicitly prohibit the use of mass balance credit methods.

The incorporation of real postconsumer recycled content into products can be a powerful tool to stimulate the demand and usage of recycled materials, creating a financial incentive to increase the recovery of these materials and reducing the dependence on virgin natural resources. It is for this reason that SB 54 encourages producers to use postconsumer recycled content in covered material.
Producers, in California and elsewhere, have argued for the use of mass balance credit methods to be allowed as part of recycled content accounting. If such methods are allowed, this would undermine the effectiveness of SB 54 since mass balance credit methods enable producers to use virgin materials, which are labeled/certified as "recycled" and then claim that they are incorporating recycled content. In some cases, these credit methods can skirt the intent of SB 54 and allow plastic to be turned into fuel to create fake recycled content credits, which are then assigned to virgin plastic. Mass balance credit methods are deceptive and should explicitly not be allowed in the SB 54 regulations since they will incentivize greenwashing rather than real recycling and recycled content.

Response to O-90-11

CalRecycle rejects this comment for the reasons stated in response to comment O-75-9.

Comment O-90-12

Article IV: Responsible End Markets

End Market Identification (§18980.4.1): Provisions around recycling technologies are dangerous, inconsistent with statutory requirements, and antithetical to legislative intent

Approval of Non-Mechanical Recycling Technologies
Minimum Performance: 'Management…in compliance with a Permit'

Section 18980.4.1(d)(B), when considered in conjunction with the rest of Section 18980.4.1(d), indicates that chemical recycling facilities generating hazardous waste that is produced and disposed of in “compliance with an applicable permit ” are allowable under the regulations, disqualifying them as generating “significant amounts of hazardous waste.” This means that these technologies are effectively automatically allowed under the regulations, no matter how much hazardous waste is produced, since the litmus test for approval is solely ‘substantial compliance’ with a permit they would have needed to obtain in order to operate anyway. In effect, this creates a legally tautological requirement under which no amount of hazardous waste would be considered “significant.”

By construing the hazardous waste provision in a manner that largely nullifies its operative force, the Department renders the Legislature’s deliberate choice of language null and void, contrary to the presumption that each word in a statute serves a purpose. The proposed interpretation contravenes the surplusage canon , a settled principle of statutory construction which requires that effect be given to every word and clause enacted by the Legislature, such that no portion of the statute is rendered redundant, inoperative, or devoid of meaning.

Additionally, compliance with applicable permits may vary by jurisdiction, making enforcement difficult or impossible. Per Section 18980.4.1(d)(B), compliance with permitting may be different in different jurisdictions, and this provision applies to end markets, which may be outside California. This would impose unequal requirements for the same technology in different jurisdictions for meeting a California requirement focused on the amount of hazardous waste generated. Accordingly, this would exacerbate historic waste colonialism by encouraging the siting of polluting technologies in the parts of the U.S. and the world with the fewest environmental protections.

Response to O-90-12

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-90-13

Insufficient Evaluatory Metrics/Criteria

Conflation of Risk and Amount

The definition of “significant amounts of hazardous waste” in Section 18980.4.1(d)(1) and Section 18980.4.1 (d) (B) is problematic. SB54 language refers to the *amount* of hazardous waste, not the *“risk”* associated with it, and these are clearly different standards. The proposed regulatory framework in this regard is also clearly and critically at odds with the SB 54 statute. As mentioned in the letter submitted to the Governor on behalf of a myriad of legislators , this unlawfully shifts the standard from the production of hazardous waste (as required by the statute) to its management, which directly conflicts with the legislative intent to exclude technologies based on the generation, not governance, of hazardous waste.

Response to O-90-13

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-90-14

Weakness in Defining 'Hazardous Waste' - Federal vs. State

The regulations reference the federal definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. Use of the weaker federal definition problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

Section 25117 of the California Health and Safety Code clearly states that "hazardous waste" means "a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141." The legislature has repeatedly stated, and the courts have upheld, that "it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law" (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

Response to O-90-14

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-90-15

Divergence from Department Precedent on Definition of 'Hazardous Waste'

CalRecycle's proposal to rely on the federal RCRA definition 16 of "regulated hazardous waste" (40 CFR part 261) for SB 54 implementation is inconsistent with how CalRecycle and its partner boards define and use "hazardous waste" elsewhere in Title 14 and Title 27 of the California Code of Regulations, where the agency repeatedly anchors to DTSC's California definition in Health & Safety Code § 25117 and Title 22, Division 4.5. For example, Title 27's joint CalRecycle/SWRCB technical definitions make "hazardous waste" expressly coextensive with Title 22 ("any waste which, under … Title 22 … is required to be managed according to Division 4.5 of Title 22"), and ties "hazardous constituent" to Title 22 Chapter 11/Appendix VIII, not federal RCRA alone. In Title 14, CalRecycle's Household Hazardous Waste definitions incorporate HSC §25117 by reference for "Hazardous Waste," and multiple construction & demolition/inert debris provisions exclude materials that are "hazardous waste as defined in Title 22, § 66261.3

et seq.,” again deferring to California’s state definition rather than importing federal RCRA scope.

Using the federal definition in SB 54—where the rest of CalRecycle’s solid-waste framework consistently points to California’s existing definitions—creates an unnecessary and incongruent departure from agency precedent and risks narrowing California’s protective coverage for hazardous characteristics that are broader under state law.

For instance, some illustrative examples where CalRecycle regulations rely on existing California definitions for Hazardous Waste rather than RCRA definitions:
● 27 CCR § 20164 (Technical Definitions): “Hazardous waste” means any waste required to be managed under Title 22, Div. 4.5; “hazardous constituent” cross-references Title 22, Ch. 11/App. VIII; “regulated hazardous waste” points to § 66260.10 (Title 22).
● 14 CCR § 18502 (HHW Definitions): “Hazardous Waste (HW)” incorporates HSC § 25117 (DTSC’s statutory definition) within CalRecycle’s HHW program definitions.
● 14 CCR § 17225.32 (Minimum Standards—Definitions): “Hazardous Wastes” expressly tethered to HSC § 25117 and related California definitions.
● 14 CCR §§ 17381, 17388 (C&D/Inert Debris): “Inert debris” may **not contain hazardous waste as defined in Title 22, § 66261.3 et seq.—an explicit reliance on DTSC’s regulatory definition.

Because CalRecycle’s own rules overwhelmingly anchor “hazardous waste” to the state’s existing Title 22/HSC § 25117 framework, importing the federal definition for SB 54 is incongruent with CalRecycle’s established regulatory practice.

Response to O-90-15

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1. Also, this commenter's specific objection is premised on giving precedential effect to how other regulations define "hazardous waste." However, the unique context of the current statute is highly dissimilar from the ones related to the cited regulations because, unlike those regulations, it necessarily considers end-of-life management of covered material that may occur or conclude outside the state.

Comment O-90-16

Reference to Inappropriate ISO Standards
ISO 59014:2024
18 does not define 'recycling,' nor does it establish criteria relevant to environmental safety, GHG emissions, or human health. Its focus on material tracking and internal process management is wholly insufficient to serve as a proxy for SB 54’s environmental justice and pollution minimization mandates. Referencing ISO 59014 misleads stakeholders into believing it aligns with California's goals when it demonstrably does not.

Staff comments during the workshop indicate that this ISO standard is intended to be a proxy for the requirement that “the department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts.” ISO 59014:2024 does not address (or even reference) the majority of these criteria.

Furthermore, the aforementioned ISO standard does not even define recycling at all, let alone in line with the statutory definition of recycling, nor does it include a single environmental or efficiency benchmark to distinguish legitimate recycling operations from fraudulent, toxic, and climate-harming operations. Instead, the ISO proposes soft, optional, qualitative guidelines for material recovery operators to standardize their operations from a labor and circular economy aspect (e.g., recommendations on types of data to collect, and on types of policies to include) and is a purely non-binding standard. In fact, unlike California law, this ISO standard does not consider energy recovery a form of disposal and promotes the use of a very narrow Life Cycle Analysis, which ignores issues around toxics and human health concerns and environmental pollution.

Response to O-90-16

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-90-17

Infrequently Reported Facility Level Information

The proposed regulations still allow PROs and Independent Producers to approve non-mechanical recycling technologies, including so-called “chemical recycling,” with CalRecycle review. Facilities must now submit information on throughput and hazardous waste generation (§ 18980.4.1(d)(4) 19), but this requirement is tied only to initial reporting. A facility could easily demonstrate minimal hazardous waste at pilot scale, secure approval, and then expand operations or shift feedstocks to produce significant hazardous waste without triggering a new review. The definition of “significant amounts of hazardous waste” is narrowed to weaker federal standards, and the prior requirement to evaluate risks against mechanical recycling baselines has been removed. This structure undermines both transparency and accountability, while violating the legislative intent of SB 54. Although records submitted to CalRecycle are nominally subject to the Public Records Act, large portions can be withheld as trade secrets, leaving the public in the dark on hazardous waste, costs, and climate impacts. To prevent abuse, the regulations must explicitly require facilities to re-enter the approval process when scaling up, changing or adding technologies, or processing new covered materials. They must also restore comparative evaluation against mechanical recycling and ensure that hazardous waste and whole-lifecycle climate impact data, including the significant climate footprint from the production and management of solvents used in recycling operations, 20 are publicly accessible. Without these safeguards, the rules risk enabling unproven or polluting “chemical recycling” projects under the guise of compliance, in direct conflict with the intent of SB 54.

Response to O-90-17

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-90-18

Language Should Reflect Unequivocal Prohibition on Chemical Recycling

Leaving the approval of recycling technologies solely to the discretion of the Producer Responsibility Organization (PRO)—as currently permitted under the draft regulations—undermines the objectivity, transparency, and environmental rigor required by SB 54. The PRO, by design, is a producer-led entity with a fiduciary and operational interest in minimizing compliance costs for its members. Granting the PRO unilateral authority to determine which technologies qualify as "recycling" creates an inherent conflict of interest that threatens to weaken the law's core requirements.

Under Public Resources Code § 42051.1, CalRecycle is directed to ensure that packaging is recyclable in practice and at scale. That determination must be grounded in science, operational evidence, and public accountability—not left to an industry-governed body with incentives to greenlight technologies that may have questionable environmental outcomes, such as pyrolysis, gasification, solvolysis, solvent-based technologies, and similar technologies , so long as they are good for their members' bottom line

To safeguard SB 54's credibility and intent, all recycling technology approvals must be subject to final CalRecycle review, with decisions made during publicly noticed monthly meetings, after:

- Meaningful public comment;
- Technical vetting by independent experts; and
- Clear findings regarding environmental safety, yield efficiency, and alignment with California's waste hierarchy.

This public, science-based process built into the statute ensures that "recycling" maintains its integrity, avoids regulatory capture, and reflects the law's intent to advance genuine circularity, not just a green-washed chemical conversion or incineration masquerading as recycling. The baseline for a process like this should be overseen by the regulatory agency, not by the companies and industry via the PRO. Furthermore, CalRecycle must defer to the legislative history reflected in both Senate and Assembly analyses and Senator Allen's 21 unambiguous statement when answering future queries on whether waste-to-energy and related technologies constitute recycling under SB 54.

Response to O-90-18

CalRecycle rejects this comment for the reasons provided in responses to comments O-62-1 and O-75-10.

Comment O-90-19

End Market 'Viability' is Ignored

While the regulations refer to a "viable responsible end market" as a responsible end market that is feasible and capable of being economically successful, there are no clear criteria for "viability" – especially given the viability requirement is only mentioned one time in the entire draft regulatory text. The regulations must be amended to require a company proposing a new recycling end market to demonstrate a track record of viability at scale.

Manufacturers have pledged recyclability for the packaging for decades, often without anything to show for it. Recovering a material that has never been effectively recycled is not "viable," and this needs to be explicitly addressed in the regulations to avoid intentional delay by packaging manufacturers that want to see material as long as possible, even when they know they will never hit the ultimate targets in the law. The statute sets a clear baseline that should eliminate problematic material types *prima facie* if the market for recycling those materials is not sustainable or solvent. To this end, CalRecycle must provide further clarity on what a viable, responsible endmarket looks like relative to a non-viable one, as well as publish guidance about how the PRO should enhance or expand access to new viable endmarkets.

Absent a functional definition of 'viable responsible endmarket' in statute or the regulations, it will be impossible for the Department or the PRO to ensure that covered material recycling is occurring in a way that prioritizes sustained investment into industries with a proven track record of success.

We would urge the Department to also include a requirement for the end market technology to have successfully demonstrated a meaningful recovery rate in a comparable producer responsibility program. As such, viability and financial solvency are of utmost importance in ensuring that Responsible End Markets remain a core fixture of the PRO's planning efforts. Additionally, it should be noted that a system where each material producer is responsible for the cost of recycling that material is crucial to prevent "punishing" highly recyclable material producers by using their money paid to the PRO to cover the cost of recycling less recyclable covered materials. Building this stipulation into the PRO funding structure is essential to ensure the equitable treatment of producers. Similarly, eco-modulation should be differentially calculated based on material type and impact, and fees collected should similarly be directed to mitigate the impacts of each.

Response to O-90-19

CalRecycle rejects this comment. See the response to comment O-75-11. Regarding the term "viability" in particular, see CalRecycle's response to comment O-71-5.

Comment O-90-20

Responsible End Market Criteria (§18980.4.): Threshold for non-degraded fraction of compost is an impossible standard, must be reduced or eliminated

Full biological decomposition is an impossibility

The regulations require that “must fully biologically decompose .” While the intent here is laudable, it is unlikely that even naturally occurring organic materials would meet a requirement for 100% degradation, especially within the same timeframe as other biologically degrading materials of diverse organic chemistry. With current technologies, setting the threshold at 100% makes this a nearly impossible standard to meet, and will result in the effective prohibition of ‘compostability’ as a compliance pathway under SB 54. We suggest using compliance with the applicable evolving and most up-to-date ASTM Standards as a proxy for ensuring the inherent degradability of covered materials. Specifically, making use of ASTM D6400 and D6868 would allow for congruency with other state and federal definitions of compostability.

Response to O-90-20

CalRecycle rejects this comment. See the response to comment O-75-12.

Comment O-90-21

End Market Identification (§18980.4.1): Producer Data should be required to be submitted to CalRecycle in addition to the PRO

Submission of Producer Data to the Department should be Compulsory
The regulations propose that producers be required to produce compliance records to the Department “upon written request
”. This is insufficient for proper regulatory
oversight by the Department, the Advisory Committee, and members of the Public. It must be a requirement that these records are annually submitted to CalRecycle, without exception. Any data that is exempt from disclosure requirements should be provided to the public and the advisory committee in aggregated form, if applicable, with trade secrets redacted. However, it is not enough for the Department to only reactively request
this data – instead, it should adopt a proactive approach of requiring this data annually and reviewing these submissions as frequently as needed.

Response to O-90-21

CalRecycle rejects this comment. See the response to comment O-75-13.

Comment O-90-22

Article VI: Requirements for the Producer Responsibility Organization Eco-modulated Fee and Fee Schedule (§18980.6.7)

Regulations Must Provide Greater Detail on How Malus Fees Should be Assigned to Covered Products Containing Toxic Chemicals

SB 54 requires fees for PRO participants and directs that the fees be adjusted with malus fees or credits, based on various delineated factors. CalRecycle’s proposed regulations provide detail on several of these factors, with CalRecycle explaining that “[b]y presenting a list of items, further detailed below, this subsection clearly lays out

requirements related to the fee, so that a PRO and participating producers can readily understand how the PRO must assess it." Similar detail is required for the factors specifying malus fees and credits related to the presence of toxic heavy metals or additives in plastic that can make recycling harder or embed toxics in the recycled plastics—these factors are not addressed in the regulations. CalRecycle should include provisions in the regulations that give greater specificity to what pathogens, heavy metals, or additives should result in credit or malus fee adjustments.

Response to O-90-22

CalRecycle rejects this comment. See the response to comment O-75-14.

Comment O-90-23

The Department has one chance to implement SB 54 faithfully and in full alignment with the Legislature's intent. If the regulations fall short—by permitting "chemical recycling," allowing broad exemptions, or creating definitional loopholes —the credibility of the entire law will be jeopardized along with its effective implementation. Californians cannot afford a hollow framework that replicates past policy failures and shifts burdens back onto the public. We therefore urge CalRecycle to correct the serious deficiencies outlined in this letter and adopt a regulatory package that is clear, enforceable, and uncompromising in holding producers accountable. Getting this right is not optional; it is essential to the integrity of SB 54, the health of California's residents and iconic environment, and the state's leadership in solving the plastic pollution crisis. We also encourage the department to build our plain-language resources/guides (such as the Annotated FAQ Guide in Attachment #1) to create clarity and certainty before ambiguity invites unavoidable, necessary future litigation.

Thank you for your consideration.
Best,
Tony Hackett
Californians Against Waste
Sarah Erlich
Center for Environmental
Health
Dianna Cohen
Plastic Pollution Coalition

Response to O-90-23

Comment rejected. No response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues. Regarding the attachment referred to as "Annotated FAQ Guide," the attachment itself is included in the rulemaking record but does not require further response because it an example of a publication the commenter presents as an example of "plain-language" guidance, not as an objection or suggested change to the regulations. Furthermore, no change to the regulations is necessary for CalRecycle to publish

a similar "frequently asked questions" document to assist the public in understanding the regulations and how to apply them.

O-91: California Chamber of Commerce (Adam Regele)

Comment O-91-1

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.

Response to O-91-1

No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the

extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-91-2

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.

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.

Response to O-91-2

Comment rejected. No response to this comment is necessary because it only expresses approval of the proposed regulations; it does not propose any change or raise any objection.

Comment O-91-3

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 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.

Response to O-91-3

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-91-4

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.

Response to O-91-4

CalRecycle appreciates the commenters support for the regulations. Nevertheless, the comment must be rejected as it does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-91-5

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 "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 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 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.

Response to O-91-5

CalRecycle rejects this comment's suggestion because the term "beverage container" is plain on its face. Secondary packaging containing beverage containers are unambiguously not "beverage containers" themselves, and the Legislature's choice to use that term, and not "packaging" (as it does for other exclusions), requires that it be construed accordingly. Because the term is plain in context of the statutory text itself, resort to the complicated evaluation of other laws and often-conflicting canons of statutory interpretation is not legally supportable.

Comment O-91-6

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 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 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).

Response to O-91-6

CalRecycle rejects this comment. The comment suggests establishing reporting requirements for calendar years, however this is already clearly addressed in statute and sufficiently clarified in regulations consistent with statute. Thus, no further changes are necessary to the implementation or enforcement of the Act.

Comment O-91-7

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 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.

Response to O-91-7

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-91-8

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.

Response to O-91-8

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42041(aa), 42041(ad), and 42060, and no change is necessary to the implementation of the Act. See the responses to comments B-6-5 and O-75-12. Additionally, sections 18980.4(a)(4)(B) and (C) of the proposed regulations are not about eligibility to be labeled "compostable"; rather, those sections are about identifying the end markets for certain materials. Those sections have no effect on whether a material satisfies the requirement to be eligible for being labeled "compostable" in accordance with Chapter 5.7 (commencing with PRC section 42355) for the purpose of PRC section 42050(b). The requirements of sections 18980.4(a)(4)(B) and (C) are appropriate, practical, sufficiently clear, and within CalRecycle's authority. CalRecycle declines to adopt the recommendation of this comment to strike sections 18980.4(a)(4)(B) and (C) in their entirety. Sections 18980.4(a)(4)(B) and (C) are necessary to offer clear guidance to regulated parties and to ensure the requirements of the Act can be achieved. Therefore, no change is necessary.

Comment O-91-9

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.

Response to O-91-9

Comment rejected. CalRecycle declines to make a change because the commenter misconstrues 18980.3.2(d)(3) as permitting a single recycling rate to be applied to multiple covered material categories by grouping "similar types of products." That that provision, however, does not contemplate comparing "types of products" but rather addresses when groups of components span multiple covered material categories for which recycling rates cannot individually be assessed. The proposed regulation allows the recycling rate for the group to be imputed to each covered material category that cannot individually be assessed. If the commenter instead intended to suggest that 18980.3.2(d)(3) be changed so that the PRO, not CalRecycle, determines when such imputation is proper, CalRecycle rejects that suggestion because it would be unnecessary and there is no justification for substituting the PRO's assessment for CalRecycle's. Nothing in the proposed regulations prohibits the PRO from requesting that CalRecycle issue the determination described in 18980.3.2(d)(3).

Comment O-91-10

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.

Response to O-91-10

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-91-11

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 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 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."

Response to O-91-11

CalRecycle rejects this comment. See the response to comment B-11-9. Additionally, to the extent this comment makes the alternative recommendation to revise section 18980.6.7(i) of the proposed regulations from "shall" to "may," no change is necessary because PRC section 42053(e) provides that fees "shall" be adjusted using malus fees when the relevant conditions are met, and section 18980.6.7(i) of the proposed regulations already extends sufficient discretion to the PRO in determining the amount of the malus fee to be charged. No further change is necessary.

Comment O-91-12

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.

Response to O-91-12

CalRecycle rejects this comment for the reasons provided in response to comment O-39-5. Treating components as part of the same item as other components based on an assumption about consumer behavior is untenable. Moreover, the commenter offers no explanation of how the definition of "detachable components" can affect whether consumers are confused; whether a component whose status as "detachable" depends on ascertaining consumers' "typical" practices has no bearing on whether producers provide instructions concerning those practices.

Comment O-91-13

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 isSB 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.

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,
Adam Regele
Vice President of Advocacy and Strategic Partnerships
California Chamber of Commerce

Response to O-91-13

Comment rejected. SB 54 cannot logically be a "program" referred to in PRC section 42355.51(d)(6). The legal effect of that provision is to render covered material "recyclable" based on being "in compliance with" some other law; SB 54 cannot be that other law because, to comply with SB 54, covered material has to be "recyclable" under PRC section 42355.51 to begin with. The text of SB 54 itself acknowledges that it is not such a program: Section 42061(a)(3)(B) refers to "a program described in paragraph (6) of subdivision (d) of Section 42355.51." Thus, no further changes are necessary to the implementation or enforcement of the Act.

O-92: Environmental Justice Communities Against Plastic (Tevin Hamilton)

Comment O-92-1

To: Zoe Heller, Director
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Re: Comments on the SB 54 Revised Regulations

We are writing on behalf of Environmental Justice Communities Against Plastics (EJCAP), a coalition of California-based environmental justice organizations focused on addressing health and the environmental impacts of the lifecycle of plastics on frontline communities. Our coalition includes the Just Transition Alliance, Pacoima Beautiful, Physicians for Social Responsibility Los Angeles, Black Women for Wellness, and Valley Improvement Projects.

For several months, we have expressed significant concerns about CalRecycle's proposed regulations and their detrimental effects on frontline and fenceline communities. Despite our numerous outreach efforts and submitted comments, it is evident that CalRecycle is ignoring community feedback and prioritizing industry interests. The draft regulations have seen little change from the previous version to the current one.

Huge contradictions exist within SB54: while it generates funding intended to benefit environmental justice (EJ) communities, it does not currently include measures to prevent additional harm to those same communities during implementation. Without protective policies in place, these funds risk being used to “clean up” harms caused by the very system they were meant to reform.

We are deeply concerned that the current draft regulations fail to adequately protect against harmful chemical recycling technologies—misleadingly marketed as "advanced recycling" or "advanced manufacturing." These processes are, in reality, incineration by another name. They release toxic pollutants into our air, land, and water, putting public health and the environment at risk. There are no safeguards in place to prevent the siting of facilities and infrastructure in or near environmentally overburdened or vulnerable communities. Without clear location-based protections, implementation could further entrench environmental injustice.

CalRecycle needs to strengthen its regulations and revert to California's more protective definition of hazardous waste, rather than adopting the weaker federal standard. The federal definition only considers solid substances and does not address hazardous air emissions. This oversight puts communities at risk of exposure to harmful emissions released by chemical recycling facilities. CalRecycle has proposed using the federal RCRA definition of "regulated hazardous waste" for the implementation of SB 54. This represents a significant departure from how CalRecycle defines and applies "hazardous

waste" in other state regulations. California's definition is broader and more protective than the federal RCRA definition.

The proposed pyrolysis plant in Rohnert Park exemplifies the risks of weak regulations. This facility plans to accept non-chlorinated plastics, vaporize them using microwave technology, condense the vapors into synthetic oil for sale, and burn the remaining non-condensable gases in a thermal oxidizer. This process would increase greenhouse gas emissions and emit a cocktail of hazardous pollutants, including: Particulate matter (PM), Sulfur oxides (SOx), Nitrogen oxides (NOx), Volatile organic compounds (VOCs), Benzine, Heavy metals like mercury, lead, cadmium, PFAS (forever chemicals), and others. These chemicals are linked to cancer, reproductive harm, and respiratory illnesses—and such facilities are disproportionately sited in low-income communities and communities of color.

While the project is no longer moving forward in California, it is a clear violation of the intent of SB 54, and other toxic operations like it should not be permissible under the regulations. If such technologies are reclassified as “advanced manufacturing”—a term which is subject to CEQA streamlining, excluding it from health protective environmental review—it could set a dangerous precedent across the state, opening the door for more polluting facilities.

CalRecycle must explicitly ban chemical recycling and similar technologies to ensure SB 54 is implemented as intended. Any ambiguity in the regulations will be exploited by industry to advance false solutions and continue harming our communities. We urge CalRecycle to reinstate California’s stricter hazardous waste definition and prohibit the reclassification of chemical recycling as “advanced manufacturing”.

Response to O-92-1

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-92-2

The Covered Material section includes exemptions that would allow producers to claim exemptions if a material is not "reasonably possible" to use compliant packaging. However, this
vague and subjective language is easy to exploit, potentially enabling widespread noncompliance through self-declared exemptions. Many food packaging formats already have
scalable, recyclable, or compostable alternatives, making such broad exemptions unnecessary.
Without clearer guidelines and definitions, this loophole could exempt the majority of food
packaging, significantly undermining source reduction efforts, recyclability mandates, and waste
diversion goals

Response to O-92-2

Comment accepted. The proposed regulation has been revised to make it clearer and objective, with procedural safeguards against bad faith submissions and widespread noncompliance. CalRecycle's response to comment I-19-1 further explains the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-92-3

The regulations as written weaken the definitions of “reusable” and “refillable” packaging and
food service ware. The current language lacks clear performance thresholds and measurable
standards, particularly for food service items. To ensure meaningful progress, CalRecycle must
adopt stricter, performance-based definitions grounded in lifecycle data and supported by
enforceable metrics.
California is at a pivotal moment in the global fight against plastic pollution. SB 54 was passed
with the clear intent to reduce plastic production and protect communities from the public health
impacts of plastics. CalRecycle must honor that intent—not undermine it.

Response to O-92-3

Comment rejected. The comment does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process. To the extent any further response is required, CalRecycle's responses to comment O-75-3, B-6-2, O-104-8, and B-38-3 establish why no revision to the proposed regulations is necessary.

O-93: Monterey Bay Aquarium, Oceana, Ocean Conservancy (Jennifer Fearing)

Comment O-93-1

Our organizations remain opposed to the unlawful provisions of CalRecycle’s proposed regulations implementing Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act, published on August 22, 2025. We appreciate the retention of important provisions in the proposed regulations including source reduction and ensuring the integrity of responsible end markets. However, several proposed provisions conflict with statutory language, exceed CalRecycle’s authority, and undermine the goals of the law to reduce plastic pollution and hold producers accountable for the cost of managing their waste. We concur with the concerns

conveyed by Senators Allen and Blakespear and Assemblymembers Bryan and Hart, joined by many of their colleagues, as well as concerns outlined in previous legislative sign-on letters (attached).

INTRODUCTION

SB 54 is a bold step by California to address plastic pollution and hold producers accountable for the rising costs of managing their waste. We appreciated the Newsom Administration's engagement to negotiate it, and that the Governor understood the goal, saying in March 2024 that SB 54 is: "the nation's most comprehensive measure to tackle the rise in plastic waste polluting our communities and ecosystems,"1 having said previously that, "California won't tolerate plastic waste that's filling our waterways and SB 54 is a bold step by California to address plastic pollution and hold producers accountable for the rising costs of managing their waste. We appreciated the Newsom Administration's engagement to negotiate it, and that the Governor understood the goal, saying in March 2024 that SB 54 is: "the nation's most comprehensive measure to tackle the rise in plastic waste polluting our communities and ecosystems,"1 having said previously that, "California won't tolerate plastic waste that's filling our waterways and making it harder to breathe. We're holding polluters responsible and cutting plastics at the source."2

If properly and lawfully implemented, SB 54 will help achieve the state's objectives and dramatically overhaul how single-use packaging and single-use plastic foodware will be offered for sale, sold, distributed, and imported in the state, and tackle plastic pollution at the source. Even a robust recycling system cannot keep pace with the ballooning production of plastics, particularly single-use plastics, which are often difficult to recycle. SB 54 refocused California's efforts on reduction and reuse while continuing to improve recycling and mitigating harm to vulnerable communities that have long shouldered the health and environmental burdens of plastic production and pollution.

As the fourth largest economy in the world, California is always on the forefront of environmental policy. We are at a pivotal moment in the global fight against plastic pollution and the implementation of extended producer responsibility programs worldwide. The impacts of this law are likely to ripple across the country and around the globe. How the state implements these policies is critical to the law's success and California must not miss this opportunity to lead the way—and must not undercut the progress in other states or risk the tenuous trust many affected parties have in EPR approaches.

Response to O-93-1

CalRecycle rejects the comment. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. To the extent that the comment endorses the comments of others or is preface for subsequent portions of its comment that are specific, CalRecycle has responded to those comments separately.

Comment O-93-2

1. Plastic pollution causes significant environmental impacts to our lands, waters, air, and wildlife.

Over 11 million metric tons of plastic pollution enter the ocean annually, equivalent to over a garbage truck's worth of plastics entering the ocean every minute.3 Plastic pollution, both in coastal and inland cities and towns, makes its way to the ocean via storm drains, rivers, and other waterways. Items in the landfill or pollution on the street can also be carried by the wind or washed by rain into drainage systems and carried to the ocean. Since the California Coastal Cleanup Day began, more than 1.8 million Californians have participated in shoreline and waterway cleanups, removing 27 million pounds of debris from the state.

Once in the environment, plastics harm wildlife, disrupt ecosystems, and reduce ecosystem services the ocean provides.4 Eating plastic can block or damage an animal's digestive tract. With its stomach full of plastic, the animal can feel full and starve to death. Nearly 1,300 species across ocean ecosystems have been documented to ingest plastics.5 Oceana found evidence of nearly 1,800 animals from 40 different species swallowing or becoming entangled in plastic in U.S. waters between 2009 and early 2020. Concerningly, 88 percent were species listed as endangered or threatened with extinction under the U.S. Endangered Species Act.6 Notably, the animals reflected in this study are far fewer than the true number of sea turtles and marine mammals that consume or become entangled in plastic in U.S. waters as not every animal is reported to a stranding network, and not every animal is found or reported to authorities after it dies. Scientists estimate that over 90 percent of all seabirds will have ingested plastic by 2050.7 Plastics can concentrate legacy contaminants (e.g., DDT) and other chemical contaminants (e.g., pharmaceuticals) from the environment up to a million times higher than surrounding seawater,8 posing contamination risks to marine life and human seafood consumers.

Microplastics, plastics smaller than 5mm in size, have been found nearly everywhere scientists have looked for them. An estimated 171,000 trillion microplastics are floating just on the surface of the ocean.10 The deep ocean floor is suspected to be a permanent resting place, or sink, of plastic pollution. One study estimates that 3 to 11 million metric tons of plastic pollution resides on the ocean floor as of 2020.11 Microplastics come from a wide variety of sources. Secondary microplastics, microplastics that result from the deterioration of larger plastics, make up the majority of microplastic pollution in the environment.

Plastics also contribute to physical plastic pollution even before they become a product. Plastic pellets, small lentil-sized granules of raw plastic resin that are used as feedstock for manufacturing nearly all plastic products, are routinely spilled at all points during the pellet supply chain—at production facilities, during transport to convertors and from recyclers, over roads, rail, and river transport, and at ports loading pellets for oversea transport and at sea.12 Pellets have been found polluting the ocean for over half a century.13

Response to O-93-2

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations and does not raise an objection concerning the rulemaking process, but merely provides background information for other portions of the comment suggesting changes or raising objections. To the extent that other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-93-3

2. Plastics cause significant air and greenhouse gas pollution across their entire lifecycle.

Ninety-nine percent of plastics are made from fossil fuels, and the process of turning fossil fuels into plastics is one of the most energy-intensive manufacturing processes in the world. Up to 5 tons of greenhouse gases, including carbon dioxide and methane, are emitted per ton of plastic.14 The plastic industry represents 3–5 percent of global greenhouse gas emissions, which is more than aviation or shipping.

The petrochemical infrastructure that produces plastics—oil and gas extraction, refining, and export facilities—emits significant air and water pollution with severe health consequences for neighboring communities including asthma, cancer, endocrine disruption, developmental disorders, and heart disease.15 For the first time, the U.S. health risks from air pollution exposure from all production and use cycles from oil, gas, and their petrochemicals was quantified and found thousands of early deaths, preterm births, asthma, and cancer, with racial and ethnic populations suffering the most.

3. Exposure to plastics, microplastics, and associated chemicals affect public health.

There is increasing evidence that plastics impact human health from their production, use, and disposal. Plastics can release toxic chemicals into the environment and people, including additives that disrupt endocrine function and increase risks of premature births, infertility, obesity, cardiovascular and renal disease, and cancers.16 Chemicals in plastics cost an estimated $249 billion in increased healthcare costs in the U.S. in 2018.17 One study estimated the U.S. health costs of exposure to just three out of the thousands of plastic chemicals to exceed $920 billion in a single year.18

There are over 16,000 chemicals associated with the plastics industry. More than 4,000 are “chemicals of concern” or hazardous because they are considered toxic, persistent or bioaccumulate and more than 10,000 have not been evaluated for their safety.19 By 2050, the plastics sector is projected to use 2 billion metric tons of chemical additives.20

Microplastics contaminate the human body through various exposure pathways, including inhalation of contaminated air and consumption of contaminated foods and

beverages. A 2024 study led by Ocean Conservancy and University of Toronto researchers found microplastics in 88 percent of protein samples, from poultry to seafood to plant-based meat alternatives.21 This study found that Americans may consume up to 3.8 million microplastics each year from proteins alone, which is just a fraction of the potential exposure pathways to microplastics.

In humans, microplastics have been found in blood, lung tissue, placentas, the brain, and testicles, among other places.22 Studies have found preliminary evidence that plastics in the human body are associated with inflammation, oxidative stress, and DNA damage, raising concerns about potential impacts to human health.23 Moreover, microplastics are suspected to impact human reproductive, digestive, and respiratory health, with a suggested link to colon and lung cancer.24

Response to O-93-3

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations and does not raise an objection concerning the rulemaking process, but merely provides background information for other portions of the comment suggesting changes or raising objections. To the extent that other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-93-4

4. Packaging is a large and growing sector driving plastic production and represents a disproportionate amount of plastic pollution.

SB 54’s focus on plastic packaging and foodware is scientifically justified. Packaging represents approximately 40 percent of annual plastic production. The majority is singleuse and not readily recyclable. Packaging is the largest and fastest growing sector for plastic production. The average American discards an average of 287 pounds of plastic each year–the highest rate in the world.25 Single-use plastics in the form of packaging and foodware frequently contaminate the recycling system, increasing costs to operate these systems and decreasing usable outputs. Moreover, single-use plastics represent a majority of the plastic pollution found along beaches and waterways. Over 70 percent of items collected over the last 40 years of Ocean Conservancy’s International Coastal Cleanup® in the U.S. are single-use plastics.26

Response to O-93-4

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations and does not raise an objection concerning the rulemaking process, but merely provides background information for other portions of the comment suggesting changes or raising objections. To the extent that other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-93-5

5. Plastics cost federal, state, and local governments to manage and clean up.

Taking into account ecosystem damages, tourism losses, impacts to fisheries, the shipping industry, and other economic benefits of the ocean, plastic pollution is estimated to cost between $500 billion and $2.5 trillion to the global economy every year.27

California ratepayer costs for curbside collection have increased substantially. According to the League of California Cities in 2021, nearly all cities anticipated a rate increase for solid waste management and more than seven of ten cities anticipated a 1–20 percent increase.28 Lack of recycling infrastructure and lack of recycling markets were cited among the reasons for anticipated increases. And this has come to pass: dozens of California cities have indeed increased the costs they charge their customersfor curbside recycling and trash collection.29 On top of these explicit costs borne by residents and small businesses, California communities are estimated to spend more than $428 million annually to clean up and control plastic pollution. Local governments in California spend approximately $1 billion per year on litter management, which includes plastic waste cleanup. According to the Department of Justice, this cost has more than doubled in the last 10 years.30

Response to O-93-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-93-6

6. Source reduction is necessary to reduce the flow of plastics into our environment and meet California's climate goals.

Numerous studies have modeled interventions necessary to achieve a significant reduction in ocean plastic pollution and the sector’s associated climate emissions, all reaching the same conclusion: we need a comprehensive approach that starts with making less plastics in addition to improving waste management systems and continuing targeted cleanups.

To avoid projected increases in ocean plastic pollution and reduce it back to 2010 levels of 8 million metric tons (MMT), models show that by 2030, we need to reduce plastic consumption and usage by 25–40 percent depending on country income level (as a proxy for plastic usage).31 Other studies have found that to achieve a roughly 80 percent reduction in ocean plastic leakage, a 47 percent reduction (including direct efforts such as elimination and reuse, and switching to non-plastic materials) by 2040 will be necessary.32 Still others have modeled efforts to reduce the climate impacts from the plastics sector and have found necessary reductions ranging between 24–30 percent by 2050 to achieve net-zero.33

There is strong scientific consensus that supports the inclusion of source reduction of plastics, especially single-use plastics, as a necessary element of tackling plastic pollution and climate change.

I. Removal of the source reduction adjustment language from prior versions of the regulations is critical to maintain the integrity and effectuate the intent of the law.

The requirement to source-reduce plastic covered material by no less than 25 percent by weight and item, by January 1, 2032, was fundamental to our organizations' support of SB 54 and was carefully negotiated as part of withdrawing a ballot initiative. Neither the Department nor the PRO have statutory authority to adjust the amount of plastic covered material required to be reduced relative to the baseline. We appreciate that the proposed regulations do not include a source reduction adjustment factor as any effort to change the source reduction mandate in regulation would be patently illegal.

Response to O-93-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-93-7

7. EPR programs are a proven policy tool and do not raise costs for consumers.

Extended Producer Responsibility (EPR) programs have a long history both globally and in the U.S., and mounting evidence shows they boost recycling and recyclability.34 Early EPR laws in the U.S. addressed products that are difficult to manage at end-of-life (e.g., electronics, paint, carpets, mattresses), and over time have expanded to encompass packaging and single-use plastics. In California, CalRecycle currently oversees EPR programs for seven product or material categories: textiles, batteries, packaging, pharmaceuticals and sharps, mattresses, carpet, and paint. There are over 100 EPR laws across the country, spanning more than 20 product categories, with 33 states having some form of EPR laws on the books. Seven states have now enacted EPR for packaging.

Analysis by Columbia University found that it is "extremely unlikely" that producers could pass on 100 percent of the costs to consumers, as modeled in the previous Standardized Regulatory Impact Assessment (SRIA).35 They suggest a conservative 30 percent incidence to consumers, which is well within their modeled confidence interval.

CalRecycle's own analysis, the "Statement of Regulatory Impact Assessment" (SRIA), found that SB 54 will deliver $32 billion in net benefits to Californians and result in a $14.4 billion increase in personal income. The SRIA also found avoided costs for California consumers and businesses of $53.3 billion. The updated SRIA, published in July 2025, estimated a nearly 50 percent reduction in implementation costs than the previously published SRIA in 2023. CalRecycle attributed the change to improved data

on covered materials in the state as a result of progress made in the needs assessment and source reduction baseline analysis, which was echoed in a statement made by leading state lawmakers.36 The SRIA was updated independent from these proposed regulations, which confirms that the reduced estimated costs of implementation are not from the unlawful expansion of categorically excluded material nor the unlawful allowance for hazardous waste generating recycling technologies.37

The SRIA was based on the assumption that producers would pass on 100 percent of the costs onto consumers, an assumption that has been repeatedly disproved in existing EPR programs and academic studies. The state acknowledged in the SRIA that a recent study found that food and beverage producers pass on a maximum of 30 percent of EPR compliance costs. Under this scenario, the SRIA found that the average annual cost of the regulations would be $20 per person, less than $0.50 per week.

California has a significant interest in reducing the production, sale, and use of singleuse plastics within the state to protect its environment and citizens from plastic pollution and climate change. Reducing single-use plastics will improve health outcomes, protect the environment and Californians' ability to use and enjoy public places, and will reduce costs on local governments and citizens.

Response to O-93-7

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-93-8

II. The retention of strong criteria for responsible end markets (REMs) is vital for restoring Californians trust in recycling and for ensuring that SB 54 effectuates its goal to increase recycling that benefits the environment and minimizes risks to public health and worker health and safety.

The requirement that to be considered recycling, covered material must be sent to a responsible end market is critical to achieving increased traceability and transparency and in doing so, provides confidence that covered materials are actually recycled and are managed in compliance with sound environmental and labor practices.

Response to O-93-8

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-93-9

III. The proposed regulations undermine the law’s reduction and pollution prevention strategies by authorizing illegal categorical exclusions for over-the-counter drugs, food and agricultural packaging, and secondary packaging associated with excluded and exempted products.

By excluding entire sectors' packaging material from SB 54's mandates, the proposed regulations would harm the state's interest in comprehensively addressing the problem of plastic pollution, starting with reduction. The proposed exclusions exceed CalRecycle's authority under the law and conflict with the plain language and intent of the statute.

A. The statutory language and legislative history of SB 54 are clear: only drugs that require a prescription are categorically excluded from SB 54's requirements.

Based on the plain language of the statute, the legislative history and intent, and previous versions of implementing regulations, packaging for over-the-counter (OTC) drugs are within the scope of the law. CalRecycle's attempt to exclude OTC drug packaging through regulation is patently illegal and contrary to law.

1. The statute plainly includes OTC drugs in the program.

A plain reading of California Public Resources Code (PRC) §42041(e)(2)(A)(i) defines excluded "medical products and products" as devices and prescription drugs. There is no need to separately define "medical products" as the term is defined within the same provision to mean "devices" and "prescription drugs." If the legislature intended to include "drugs," it would have separately listed them in addition to "devices" and "prescription drugs." The reference to the federal definition of "drugs" is merely to ensure "prescription drugs" can be understood because, to define "prescription drugs,"38 it is necessary to also define what is meant by "drug," as recognized by the draft regulations under §18980.2(a)(5) (excluding prescription drugs).

The plain reading of the statute is further supported by the conflict provision, PRC §42060(b)(2), which ensures that no requirements imposed by SB 54 or the PRO conflict with specified requirements, including 21 C.F.R. §211.132, titled "Tamper-evident packaging requirements for over-the-counter (OTC) human drug products." Clearly, OTC drugs were meant to be included in the scope of the law or citation to this provision would not be necessary.

2. The legislative intent and history of SB 54, affirmation by the lead author, and recognition from industry, further support the inclusion of OTCs drugs.

The inclusion of OTC drugs in California's packaging EPR program was settled in the previous versions of SB 54 dating back to 2019. As described in the Appendix to our December 2024 comment letter (attached), the language in previous bills was exactly the same as the language enacted in 2022. Legislative policy committee analysis for both the 2019 and 2022 versions of SB 54 specifically call out the exemption for prescription drugs only. This interpretation was further buttressed by Senator Allen's letter from December 17, 2024 (attached) and in the initial and subsequent versions of the regulations.39

It was widely understood that this provision did not exempt OTC drugs. Numerous industry associations that opposed prior versions of SB 54 that included the exact same language around prescription drugs complained about the language not exempting OTC medications. For example, an August 2020 opposition floor alert spearheaded by CalChamber notes: “No Exemption for Over-the-counter Medicines: Over-the-counter medicines are not exempt, creating concerns over the availability and price of overthe-counter medicines, while prescription medicines are – for no clear policy reason – exempt.” Attached are multiple letters and floor alerts with this concern highlighted. The legislature was aware of this issue when it passed SB 54 in 2022 and chose to maintain the same language and affirmatively include OTC drugs.

By categorically excluding all OTC drugs with narrow exceptions, the regulations illegally propose to significantly narrow the scope of the law and remove covered material items that are currently recyclable or compostable or that could comply with SB 54 mandates without threatening health, safety, or federal packaging requirements. The effort by industry to redefine words in the statute without giving effect to other sections of the law or the legislative intent is disingenuous and an obvious attempt to evade legal requirements agreed to when negotiating SB 54.

B. The proposed regulations significantly expand the scope of exclusions for food and agricultural packaging and place the determination of whether such material is categorically excluded in the hands of industry.

SB 54 directs CalRecycle to ensure regulations under SB 54 are not in “direct conflict” with federal laws and regulations related to food safety and tamper-evident packaging. The proposed regulations have gone significantly beyond the statutory directive by enabling exclusions for any “packaging or packaging components used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules or guidelines issued by the United States Department of Agriculture [USDA] or the United States Food and Drug Administration [FDA].” The currently proposed categorical exclusion would unlawfully remove an enormous number of products that were included under the scope of the law and can meet the requirements of SB 54 without any “direct conflict” with federal law. This language creates a new, significant, and broad exclusion that could theoretically exclude all packaged food with no process or criteria to determine what packaging is “reasonably possible,” leaving each producer to decide whether their packaging is covered material. Limiting this exclusion to “agricultural commodities” does not address the legal or policy concerns raised by this unlawful expansion of categorially excluded materials.

Categorically removing these items would greatly undermine the program, increase costs on producers, haulers, and ratepayers who will shoulder the costs of managing these materials without program funding, and exclude products that may already be in compliance with SB 54’s standards.

The proposed regulations authorize producers to determine whether their packaging components are excluded under PRC §18980.2. The proposed regulations then describe a timeline and burden that CalRecycle must meet to evaluate and potentially disqualify the exclusion, potentially taking up to 300 days. As written, this approach creates the following highly disruptive and undermining concerns:

(1) The volume of exclusion determinations by producers is likely to be very high— not only creating an impossible amount of work for CalRecycle to undertake but resulting in a significant and unwarranted reduction in the scope of SB 54's covered items.
(2) The cost to process, review, and analyze each determination is likely to be high. Given that there is no mechanism outlined in the regulations for producers to pay for the Department's effort for this review, the costs for each review will be borne by taxpayers.
(3) The timeline incentivizes producers to make these determinations because they can avoid paying into the program for up to a year, even if CalRecycle ultimately determines the request to be invalid. Nothing in the regulations requires the producer to pay back the PRO for the effort made to collect those materials during the time that the component was wrongfully excluded.
(4) The evaluation process under this provision could swallow the entirety of CalRecycle staff effort to manage the program, and result in exclusions that last far longer than justified by the information provided by the producer.
(5) The uncertainty this provision generates for the PRO as they work to draft and submit a plan in mid-2026 is considerable—making it impossible to develop an accurate plan with the likelihood that producers will claim a significant number of exclusions.
(6) The regulations' inclusion of federal "guidelines" as sufficient for a producer to claim an exclusion is a very low bar, and one highly susceptible to lobbying by the very producers hoping to reduce their responsibility to join and pay into the program.
(7) The lack of a timely re-review of excluded materials could result in a failure to recognize when innovation has occurred that overcomes the direct conflicts with federal regulations. A timebound limitation on the exemption or a required resubmission of information

Lastly, this provision shows a fundamental incongruity in CalRecycle's application of SB 54's broad directives to avoid conflicts with federal law and to avoid disproportionate harms of the regulations and infrastructure on disadvantaged and low-income communities, and rural areas. While CalRecycle has now construed this provision to respond to the advocacy by industry producers as necessary, it has continued to insist that the agency has met SB 54's obligation to ensure the avoidance and minimization of harm to communities that have long borne the brunt of plastic pollution, landfills, and other waste management infrastructure, is addressed broadly and not in need of a specific provision to address it. CalRecycle has, therefore, made plain with this approach that it is responding directly to the lobbying of producer interests while ignoring and diminishing the repeated calls by the environmental and environmental justice community for similar protection of its interests.

We understand from your comments at the Packaging Producer Responsibility Advisory Board meeting on May 30, 2025, and the public workshop on May 27, 2025, that this

exclusion was not intended to be a wholesale exclusion of any packaging that may be regulated by the USDA or the FDA and was meant only to apply narrowly to “commodities with irreconcilable conflicts” where a commodity has “zero options to comply with SB 54 and also comply with required federal” standards. You also remarked that if any “innovation in the field that opens up new packaging options… the exclusion would cease to apply.” However, as drafted, this exclusion would blow a giant hole in the regulated landscape without any process for those packaging materials to be phased in. This exclusion is not only inconsistent with the law, it is unnecessary as SB 54 already includes a process to exempt covered material under the unique challenges or health and safety exemption provisions. If there are situations where the requirements under federal law are truly “irreconcilable” with SB 54 compliance, producers can make their case and CalRecycle can grant exemptions.

Response to O-93-9

Comment partially rejected and partially accepted. Regarding the proposal that the regulations should not consider any over-the-counter drugs as excluded from the definition of "covered material," CalRecycle declines to make any change for the reasons stated in response to comment O-49-1.

Regarding the exclusions for food and agricultural packaging, the commenter incorrectly asserts that statute only concerns conflicts with "laws and regulations related to food safety and tamper-evidence packaging." That assertion ignores the plain text of Public Resources Code section 42060(b)(2), which refers to "direct conflict with a federal law or regulation" and then lists certain examples. That list is prefaced with the phrase "including, but not limited to laws." In other words, the list of particular laws that would justify excluding packaging from regulation is non-exhaustive. Nor does the commenter offer any alternative to the text currently included in section 18980.2(a)(2). Instead, the commenter appears to assert that that text be removed and that the provisions of section 18980.2.4 (implementing exemptions pursuant to Public Resources Code section 42060(a)(3) and (4)), are sufficient to satisfy the mandates of Public Resources Code section 42060(b). That assertion is untenable because, if exemptions authorized under 42060(a)(3) and (4) were sufficient, section 42060(b) would serve no purpose whatsoever. See, also, CalRecycle's response to comment I-59-2. Moreover, the commenter claims that there would be no means for new packaging materials to be "phased in," but that is untrue: As explained in 18980.2(a)(2)(E) (formerly (B)), CalRecycle has the authority to review, at any time, the support for any claim that the exclusion applies and determine that it does not. See, also, CalRecycle's responses to comments I-19-1, O-90-3, and B-47-3, which provide additional reasons for declining to make commenter's suggested change.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be

applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-93-10

IV. The proposed regulations go beyond what is authorized by statute by allowing technologies that generate a significant amount of hazardous waste to count as recycling and by failing to encourage recycling technologies that minimize the "generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts."

The proposed regulations illegally conflate the generation of hazardous waste with its disposition and management, and in doing so, allow for potentially harmful and toxic processes to count as recycling in conflict with the language and intent of the law. The plain language in PRC §42041(aa)(5) details clear and specific requirements for the regulations including encouraging "recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts" and excluding "plastic recycling technologies that produce significant amounts of hazardous waste." The proposed regulations fail to properly implement both of these statutory requirements. Further, the proposed regulations are inconsistent with the intent of the law that "Technologies using pyrolysis, gasification, solvolysis, and similar technologies that involve combustion and incineration, as well as the generation of hazardous waste, are therefore prohibited from being considered 'recycling' under SB 54" as described in the author's Letter to the Journal in June 2022 (attached).

Moreover, the proposed regulations create inconsistencies with the State's policies as evidenced by the State's Attorney General filing a lawsuit against ExxonMobile40 for misleading the public on the recyclability of plastics, including their use of chemical recycling technologies.41

A. The regulations allow for recycling technologies that generate any amount of hazardous waste provided the facility is permitted and conflate production of hazardous waste with risk.

The proposed regulations illegally shift the focus on excluding recycling technologies based on significant hazardous waste production to the management of that hazardous waste and risk-based assessments. The threshold of "substantial risk of harm to public health, or to the contamination of the environment" is an unlawful conflation of risk with production of hazardous waste. The law is clear that the criteria for exclusion must be based on the generation of hazardous waste, thus the risk-based threshold proposed in the regulations is insufficient as a criterion for inclusion as a recycling technology. Further, the declaration that hazardous waste "handled and disposed of in compliance

with an applicable permit does not present a substantial risk of harm" conflates the statutory requirement for exclusionary criteria based on production with waste management permitting.

As permit requirements and enforcement for hazardous waste are not uniform across the country or outside the U.S., this threshold creates a potentially unequal advantage based on location. Moreover, by giving preferential treatment to locations with the least permitting requirements, these regulations would likely result in the generation of hazardous waste in the areas already burdened by other polluting industries and facilities, which stands in direct conflict with the intent of the law and CalRecycle's statutory directive under PRC §42060(d) to ensure the regulations, and activities conducted in accordance with the regulations, "avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas."

Criteria based on the "production of significant amounts of hazardous waste," as required by the law, would establish a uniform standard based on generation of hazardous waste that would not result in the continued disproportionate impacts in areas with the least stringent permitting requirements, which are frequently disadvantaged or low-income communities. The goal of SB 54 is not to stifle innovation, but rather focus innovation on the technologies that do not harm people or the environment while recovering plastics to displace the need for fossil fuels. A clear, production-based criteria would offer more clarity to technology innovators on the standard to be considered as a recycling technology.

B. The proposed regulations fail to encourage recycling technologies that minimize the "generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts" as required by PRC §42041(aa)(5).

CalRecycle must include provisions that encourage less impactful recycling technologies as required by law. The ISO standard referenced in the regulations does not include an analysis of the criteria listed under the law, making it wholly insufficient for determining whether these technologies are minimizing the impacts. Numerous peer-reviewed studies, including a recent study by the National Renewable Energy Laboratory (NREL),42 have found that chemical recycling technologies have higher environmental impacts from greenhouse gas emissions to toxicity.

There are a variety of peer-reviewed tools, including one recently developed by the National Renewable Energy Laboratory,43 that compares impacts across different technologies for recycling the same feedstock. The regulations could require this type of analysis to ensure the PRO is prioritizing technologies that minimize harm.

C. The proposed regulations must utilize California's definition of hazardous waste.

Regulations implementing state law should use existing state law to define hazardous waste. The previous regulations, made public December 2, 2024, correctly defined hazardous waste based on the existing California definition:

“For purposes of paragraph (5) of subdivision (aa) of section 42041 of the Public Resources Code, "hazardous waste" is defined as provided in section 25117 of the Health and Safety Code and section 66261.3 of Title 22 of the California Code of Regulations. Hazardous waste further includes "acutely hazardous waste," "extremely hazardous waste," "non-RCRA hazardous waste," and "RCRA hazardous waste," as those terms are defined in section 66260.10 of Title 22. Without limitation, hazardous waste includes the substances identified as hazardous waste and substances that create a presumption that waste is hazardous in article 4, article 4.1, or appendix X of chapter 11 of division 4.5 of title 22.

Utilizing the less stringent federal definition of hazardous waste for the purpose of SB 54 while using the state definition for the myriad other programs that CalRecycle administers will only create confusion and inconsistencies in the law. CalRecycle must ensure consistency across its programs and maintain standards set in state law.

D. The lack of public transparency and information sharing with the Department on the facilities under consideration for recycling undermines the Department’s ability to uphold their statutory requirements.

The proposed regulations require that facilities provide to the PRO information on their technology and the generation of hazardous waste, however, it does not require the PRO to transmit or include this information to the Department as part of their Plan. Rather the proposed regulations only require that the PRO to “justify its conclusion.” This endangers the Department’s ability to make an accurate determination on the technologies in question and to uphold their statutory requirement to ensure that the requirements of this law be met.

Response to O-93-10

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-93-11

CONCLUSION

SB 54 is an affirmative effort by the state to arrest the uncontrollable costs associated with packaging waste on consumers and address the health impacts associated with plastic production, use, and pollution which are borne disproportionately by vulnerable communities. SB 54’s core tenet is that costs to consumers and ratepayers will decrease when industry finally takes responsibility for the full lifecycle of their products’ packaging from design to end of life. Motivated as they are to maximize profit, innovate, and compete, SB 54 incentivizes producers to transition to materials that have value beyond a single use. Unfortunately, the proposed regulations will not reduce costs to

consumers, businesses, or local governments. Instead, the proposed regulations will likely increase costs to some producers, haulers, and local governments, and would allow many producers to carry on business as usual while Californians continue to shoulder the costs.

California must continue to be a global leader in combating the plastic pollution crisis. It is imperative that the state's regulations not undermine the strong mandates under the law. We look forward to continuing to engage with CalRecycle on the implementation of this monumental law. If you have any questions based on our feedback, please reach out to Jennifer Fearing (jennifer@fearlessadvocacy.com).

Sincerely,

Response to O-93-11

Comment rejected. No response to this portion of the commenter's submission is necessary because it recounts the proposals and objections stated earlier in the submission. To the extent the issues mentioned in this comment require responses, CalRecycle has provided them in response to other portions of the submission discussing the same issues.

Regarding the attachments that the commenters included with their submission (and which are included in the rulemaking record), those attachments address draft regulations that are not part of this rulemaking, so no separate responses to them are necessary. To the extent the commenter's comments on the current regulations incorporate or rely on the attachments or raise the same issues as those attachments raised, CalRecycle's responses to the comments have addressed the substance of the attachments.

O-94: Global Alliance for Incinerator Alternatives (Sirine RACHED)

Comment O-94-1

We appreciate the opportunity to submit written comments on the 19 August 2025 iteration of the SB54 draft regulation, following our comments on earlier versions, as we appreciate your team's readiness to exchange views with us during informal workshops, advisory board meetings, and virtual meetings.

Recognizing the work that your agency has put into these draft regulations, we emphasize the need for compliance with the SB 54 statute, California's Public Resources Code (PRC) and the Clean Air Act, to ensure the safeguarding of California's climate commitments and protect our communities and ecosystems from toxic harm.

We note with regret that the 19 August formal draft regulations **left unaddressed virtually all of the issues regarding pyrolysis incineration and other technologies marketed as "chemical recycling" that we had flagged** in our 3 June 2025 comments and in subsequent engagements with your agency, despite scientific

evidence provided in support of our recommendations and briefings organized with leading scientists whose research demonstrates the climate and toxic harm arising from those technologies.

We take this opportunity to make the following recommendations :

1. The regulations must clarify that pyrolysis is incineration and disposal, not recycling, in line with California law and as explicitly categorized in the federal Clean Air Act (p. 2);
2. A prohibition or moratorium on plastic waste pyrolysis, gasification, solvolysis, depolymerization, and solvent-based purification would best uphold the statute (p. 3);
3. The unacceptable climate and toxics impacts from those technologies are inconsistent with the statutory definition of "responsible end markets" (p. 4);
4. The regulation's responsible end market criteria ignore the statutory emphasis on environmental benefits, prevention of hazardous waste generation, broad consideration of health risk, and ignore California's hazardous waste definition and fail environmental justice (p. 7).

While this letter focuses on the issue of disposal and hazardous technologies marketed as "chemical recycling", we echo the concerns raised in the coalition sign-on comments letter led by Californians Against Waste.

Response to O-94-1

Comment rejected. No response to this portion of the commenter's submission is necessary because the comment previews the recommendations discussed in detail in subsequent portions of the letter, and those recommendations have been addressed in response to those subsequent portions.

Comment O-94-2

1. **Regulations must clarify that pyrolysis is incineration and disposal, not recycling, in line with federal and California law**

Federal legislation (Clean Air Act Section 129) classifies pyrolysis as incineration, not recycling. Pyrolysis also fits California's definition of incineration under Title 14 of the California Code of Regulations § 17225.33.

At the same time, misleading claims are being made that pyrolysis and related technologies are "recycling" (with marketing terms such as "advanced recycling" or "chemical recycling"). As you are aware, the California Attorney General has filed a lawsuit alleging, with ample evidence, that these technologies are not recycling and that describing them as such amounts to fraudulent and deceptive business practices. Eighty percent of both proposed and operating "chemical recycling" facilities in the U.S. use pyrolysis, and therefore cannot be considered as recycling under the statute.

Pyrolysis is expected to remain the dominant "chemical recycling" technology over the coming decade.

Furthermore, pyrolysis and associated processes burn off most of the plastic waste, and produce a low yield of highly-contaminated pyrolysis oil that needs dilution with large amounts of virgin petroleum naphtha to become usable in a steam cracker to make recycled plastic polymer. This means that even in the best case scenario only 2% of the plastic waste fed into pyrolysis will actually make the round trip into the steam cracker and effectively be recycled.

Currently the draft regulations text is hard to read, due to multiple references to different sections of California statute and regulations, and would benefit from some clarifications recalling existing definitions of pyrolysis. Reverting to the following language in the previous version would clearly delineate technologies that constitute disposal :

Proposed textual changes (additions and ~~deletions~~):

Section 18980.3.5. Disposal of Covered Material
(e) Pyrolysis and other forms of disposal, as defined in subdivision (b) of section 40192 of the Public Resources Code.

Response to O-94-2

Comment rejected. Regarding defining "other forms of disposal" according to Public Resources Code section 40192(b), CalRecycle rejects that proposal for the reasons stated in response to comment O-13-11. Regarding pyrolysis, classification under federal law is not relevant to the Legislature's intent in drafting the statute implemented by the proposed legislation. To the extent a pyrolysis process is, as a technical matter, incineration, that process is expressly defined as disposal in Public Resources Code section 42041(aa)(2)(B). Moreover, in the statute, the Legislature omitted express reference to pyrolysis as a process that could not be considered "recycling," and it would be inappropriate for CalRecycle to achieve that result without some statutory basis. Notably, the Legislature chose to create a new definition of "recycling," rather than relying on Public Resources Code section 40180, which cannot encompass pyrolysis (which is "transformation" under section 40201 and thus excluded by the terms of 40180). Finally, to the extent recycled output is only traceable to 2 percent of the covered material inputs, section n18980.3.2(b)(2)(A) requires that recycling rate calculations account for that proportion accordingly.

Comment O-94-3

2. A prohibition or moratorium on plastic waste pyrolysis, gasification, solvolysis, depolymerization, and solvent-based purification would best uphold the statute

A categorical **prohibition or moratorium** on plastic waste pyrolysis, gasification, solvolysis, depolymerization, and solvent-based purification - technologies marketed as

"chemical recycling" - is needed to protect genuine recycling. It would also provide regulatory clarity and best uphold the statutory language in Section 42041.aa(5):

*The department's regulations shall encourage recycling that **minimizes** generation of hazardous waste, generation of **greenhouse gases**, environmental impacts, **environmental justice impacts**, and **public health impacts**. [emphasis added]*

The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

A prohibition or moratorium is justified because:

- It provides regulatory clarity since so-called **"chemical recycling" of plastic waste is not recycling:** most facilities (pyrolysis, gasification) burn off most of the plastic waste and otherwise have hazardous waste as their main outputs, rather than recyclate that can safely be used in plastic packaging applications to replace primary (virgin) plastic (see Section 2. below);
- As a result, whatever minute amounts of plastic recyclate produced come at an **unacceptable climate and toxics cost** (see Section 3.) that are **incompatible with the statutory definition of "responsible end markets";**
- Unlike mechanical recycling, "chemical recycling" technologies produce **significant amounts of hazardous waste,** which should render them ineligible according to the statute, except that the draft regulation empties the definition of "significant amount of hazardous waste" of its substance;
- "Chemical recycling" of plastic waste creates **environmental justice burdens for which the regulations have no safeguards,** in contradiction of the statute;

We therefore urge CalRecycle to revise the draft regulations in order to **exclude plastic waste pyrolysis, gasification, and solvolysis (ie. "chemical recycling")** technologies in California, until these can be shown to be safe for health, the climate and the broader environment, from a whole-lifecycle standpoint, and until they meaningfully displace virgin plastics, instead of cementing our dependence on them. This can be achieved with the textual change below.

Proposed textual changes (additions and deletions):
ARTICLE 4: Responsible End Markets - Section 18980.4.1. End Market Identification
[...]
(d) A PRO or Independent Producer shall not include in its plan as a responsible end market a technology, other than a mechanical recycling technology in use within the State as of the effective date of the Act~~, if the facilities employing it produce significant amounts of hazardous waste as defined in paragraph (1).~~
***Delete all sub-paragraphs to paragraph (d) in their entirety:** (1), (1)(A), (1)(B), (2), (3), (4), (4)(A), (4)(B), (4)(C), (4)(D), (4)(E), (5), and (6).*

Response to O-94-3

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-94-4

3. Climate and toxics harm from "chemical recycling" are incompatible with the statutory definition of responsible end markets

SB 54 states that " To be considered recycled, covered material shall be sent to a responsible end market" (PRC Section 42041 (aa)(3)) and states:

""Responsible end market" means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that ***benefits the environment and minimizes risks to public health and worker health and safety.*** *The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety." (PRC Section 42041 (ad), emphasis added).*

The following evidence on the environmental and health harms arising from pyrolysis, solvolysis, and other "chemical recycling" technologies are clearly not compatible with the abovementioned requirements of environmental benefit and minimized risk to public and worker health.

Hazardous waste and emissions

- **Flawed LCAs**: Lifecycle assessments (LCAs) are key tools used by policymakers and industry actors to evaluate the environmental performance of products and processes. A recent UCSF study shows that even government and peer-reviewed LCAs of "chemical recycling" systematically underestimate harm to human health and the environment from toxic and hazardous substances due to three structural flaws:
- they omit the generation and disposal of hazardous waste and the need to purify the complex and contaminated chemical mixtures resulting from pyrolysis, gasification, and solvolysis;
- they rely on inadequate inventory databases lacking information on plastic-related chemicals and their harm to human health and the environment;
- they wrongly assume that pyrolysis outputs can replace virgin petrochemical inputs at a 1:1 ratio;

Unfortunately, ISO standard 59014:2024 quoted in the draft regulations promotes the use of misleading, narrow-scope LCAs that largely ignore the toxics footprint of recycling technologies and resulting harm to human health and the environment.

For this reason, GAIA recommends that the **regulations omit this ISO reference.** The regulations would not be weakened by omitting this reference since ISO 59014 is not specific to recycling, but is a general document on material recovery. It is not an international standard for what constitutes recycling and does not include a single environmental or efficiency benchmark to distinguish legitimate recycling operations from ineffective, toxic, and climate-harming operations.

Significant hazardous waste transported across states: NRDC's review of 47 operating, proposed, canceled and closed "chemical recycling" facilities in the U.S. shows that:

- all forms of "chemical recycling" produce hazardous waste, hazardous emissions, and/or rely on toxic solvents, with EPA data showing that between 2021 and 2024, just three pyrolysis facilities processing plastic waste generated over 2 million pounds of hazardous waste;
- hazardous waste from "chemical recycling" facilities puts multiple communities at risk: just three pyrolysis facilities had their hazardous waste transported through 13 states on the way to disposal;
- if all pyrolysis facilities currently proposed or under construction begin operating, between 624,000 and 10.8 million additional pounds of hazardous waste would be generated, transported through, and disposed of in communities across the country.

As drafted, the current draft regulation could open the floodgates for a dramatic rise in so-called "chemical recycling" facilities and associated hazardous waste generation, which evidence shows will pollute and harm adjacent communities and ecosystems, and along the routes where hazardous waste is transported.

- **Up to 100% cancer risk, organ damage, harm to unborn children:**
- *ProPublica* reported that the EPA estimated a 100% cancer risk from lifetime exposure to a boat fuel component made from the pyrolysis of plastic waste at a US facility;
- *ProPublica* also reported that EPA estimated, conservatively, that air pollution from making fuels out of plastic waste at a separate facility could lead to cancer in 1 out of 4 people exposed to it over a lifetime;
- The "Braven Environmental" pyrolysis facility in North Carolina is registered with the EPA as a large quantity generator that generates at least 1,000 kilograms per month of hazardous waste. Its permit application lists risks from pyrolysis oil including: genetic defects and cancer, organ and fertility damage, dangers to unborn children, in addition to being "very toxic to aquatic life," "extremely flammable," and having "long lasting effects."

While SB 54 does not allow plastic to fuel, the plastic waste pyrolysis process to make chemicals that can be used in plastics is the same process as is used for fuels, except that it has additional purification/decontamination steps; if anything, the process toxic emissions are likely to be even higher than for fuels.

Greenhouse gas emissions

- **Greenhouse gas emissions doubled:** Cutting-edge research shows that the widespread adoption of current "chemical recycling" technologies could double the greenhouse gas emissions from plastic production - largely due to the climate impact of making solvents and managing solvent waste.
- **Major emitter**s: The National Renewable Energy Laboratory found that "chemical recycling" produces an order of magnitude more greenhouse gas emissions than mechanical recycling, and more emissions per ton than primary (virgin) plastic.
- **3 lb of CO2 per lb of recycled styrene**: GAIA's analysis of the much-hyped Agilyx facility in Tigard, Oregon found it emitted more than 3 pounds of CO2 for every pound of recycled styrene that it produced.

Increased so-called "chemical recycling" of waste plastic would therefore increase California's overall greenhouse gas emissions and conflict with the environmental benefits and minimized harm to health requirements in the statutory definition of "responsible end markets." GAIA further notes with concern that the current version of the regulations do not contain a single reference to greenhouse gases, nor does ISO standard 59014:2024 included as an end market criterion in section 18980.4.1.(d).2.

International standards are clear: the Basel Convention has explicitly rejected the inclusion of pyrolysis and other so-called "chemical recycling" in its plastic waste management guidelines because these technologies could not be shown to be environmentally sound.

California should likewise exclude these technologies from its definition of "responsible end markets" given their environmental and human health record. The abovementioned prohibition or moratorium would resolve this issue.

Response to O-94-4

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1.

Comment O-94-5

4. Responsible end market criteria: regulations ignore statutory emphasis on environmental benefits and prevention of hazardous waste generation, broad consideration of health risk, ignore California hazardous waste definition, fail environmental justice

As mentioned above, SB 54 defines responsible end markets as "*a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that* ***benefits the environment*** *and* ***minimizes risks*** *to public health and worker health and safety.* (emphasis added, PRC Section 42041 (ad)).

In addition, the statute's approach to hazardous waste focuses on prevention ("*The department's regulations shall encourage recycling that* ***minimizes generation of hazardous waste***" (emphasis added, PRC Section 42041 (aa)(5)).

However, the regulations ignore the statutory emphasis on environmental benefits and on the prevention of hazardous waste generation.

Instead it shifts the emphasis downstream to the management of hazardous waste and defines away the statutory threshold of "significant amounts" of hazardous waste by equating it with permit compliance (Section 18980.4.1(B)).

This approach allows technologies to qualify as recycling regardless of the type and quantity of hazardous waste they produce, in direct violation of the statutory requirement for the Department to "*include criteria to* ***exclude*** *plastic recycling technologies that produce significant amounts of hazardous waste"* (emphasis added, PRC 42041(aa)(5)).

By relying on permitting to define hazardous waste, these draft regulations make the same technology subject to compliance with numerous different jurisdictional requirements, including those outside of California when dealing with end markets. Given that permitting tends to be less stringent outside of California, this provision could exacerbate existing, and create new, **waste colonialism abuses.**

Furthermore, the draft regulations undermine statutory intent by using the narrow federal definition of hazardous waste as a benchmark instead of the broader and more protective California definition that is already referenced in several CalRecycle regulations. Likewise, the regulation considers only *"significant effects on the environment and risks to public health and safety"*. This phrasing invites arguments to dismiss documented harms under the pretext that they are not "significant", when it is known that toxics can harm human health and organisms at low levels of exposure, particularly when such exposure is prolonged such as when polluting infrastructure is located near communities.

Furthermore, the regulations fail to provide any safeguard against cumulative pollution and cumulative health impacts from end markets, which the consideration of CalEnviroScreen would surface.

Response to O-94-5

CalRecycle rejects this comment for the reasons provided in response to comment O-62-1 and O-90-15. Regarding cumulative pollution and health impacts, CalRecycle further rejects this comment because the only suggestion is

"consideration of CalEnviroScreen." The comment offers no further elaboration, such as explaining how the regulations could incorporate "CalEnviroScreen" or how doing so would relate to CalRecycle's statutory obligations. CalRecycle also rejects the assertion that the regulations do not provide any safeguard for these cumulative effects. To the contrary, section 18980.4 imposes rigorous requirements to ensure that end markets verifiably act responsibly and minimize environmental impacts.

Comment O-94-6

In conclusion, the draft regulations fall dangerously short of the statute when it comes to protecting public health, the climate, and the broader environment. Furthermore, they threaten to turn California into a toxic playground for polluters showcasing false solutions to plastic pollution, as detailed in California Attorney General Rob Bonta's ongoing lawsuit.
It is essential that all of us-the State of California, community, non profits, PROs, and industry-are focused on the true intent of SB 54: to address the overwhelming amount of plastic packaging and its connected health, environmental, and climate impacts. It is more important than ever that California prevent industry polluting our communities, air, water, land, and climate. We're looking to you for that crucial leadership with SB 54.

Response to O-94-6

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent that preceding portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-95: CA State Legislators (Senator Ben Allen)

Comment O-95-1

As we have conveyed in prior communications to the Governor and Director Heller (attached), SB 54 demonstrates California's commitment to leading the nation in environmental policy and facing the plastic pollution crisis head-on by ensuring producers share the responsibility for the end-of-life management of the materials they create. For SB 54 to fulfill its promise and objectives, it is crucial that the implementing regulations reflect not just the letter of the law, but also the Legislative intent, to maintain California's position as a national and international leader on fighting plastic pollution.

We appreciate the addition of language that clarifies that the intention of the new categorical exclusions is to exclude packaging that would result in a direct conflict with complying with federal requirements. Additionally, we recognize that the regulations

now include a requirement for producers to submit their claims to the department. However, the proposed regulations continue to contain overly broad exemptions, which exceed the language of the law. This will result in glaring loopholes and the exclusion of broad categories of products that are covered materials under the statute. The more materials that are excluded from the program, the more costs everyday Californians will continue to pay for their disposal and the more the producers who are left in the program will have to pay to fund program costs. We also remain deeply concerned about the proposed regulatory approach to the use of polluting technologies.

It is disappointing that the regulations fail to address these significant concerns, and we reiterate our request to revise the regulations to address the issues raised.

Dear Governor Newsom, Secretary Coloretti, Secretary Garcia, and Director Heller,

California's landmark legislation, SB 54, demonstrated our state's ongoing commitment to leading the nation in environmental policy by taking on the plastic pollution crisis head-on and ensuring producers share the responsibility for the end-of-life management of disposable materials they create. Enacting SB 54 was just the first step – it is crucial that the implementing regulations reflect the intent and letter of the law to maintain California's position as a national and international leader on fighting plastic pollution. We support the administration's goal of finalizing regulations quickly to ensure that the state and producers can meet the timelines established in SB 54. To this end, we appreciate the additional operational details in the most recent discussion draft for producers and the producer responsibility organization (PRO) to ensure timely and robust compliance with the law, such as the addition of a deadline for producers to register and report data to the PRO and simplified reporting structures. We also appreciate the removal of the source reduction adjustment factor, which was not authorized by the Act. However, several provisions in the last draft are inconsistent with the governing statute established by SB 54. These issues, described below, must be addressed before the regulations are finalized.

Failure to exclude recycling technologies that produce significant amounts of hazardous waste

SB 54 calls on Calrecycle to ensure, "the regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." The draft regulations fall short of this requirement. Instead of excluding such technologies, the current criteria allows for their use if the hazardous waste they produce is managed in accordance with certain standards, and any hazardous waste handled and disposed of in "substantial compliance with an applicable permit." This unlawfully shifts the focus from the generation of hazardous waste, as described in statute, to the manner in which it is handled. Moreover, the regulations continue to disregard SB 54's requirement to encourage recycling technologies that minimize the "generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." Including the ISO standard is insufficient in meeting the statutory requirement and does not include any criteria or other incentives that

encourage the use of technologies that minimize these additional public and environmental health impacts.

Expansion of categorically excluded products is contrary to the law

The July draft regulations continue to include a significant expansion in the scope of products that are categorically excluded from the program, which is not only contrary to the statute but also risks significantly increasing the program's costs – creating winners and losers among producers -- by increasing the amount of contamination in the recycling stream and thereby increasing the need for enforcement. First, the informal regulations exclude food packaging “necessary to comply with rules, guidance, or other standards issued by the United States Department of Agriculture or the United States Food and Drug Administration” from the program. SB 54 requires CalRecycle to ensure the regulations do not directly conflict with federal packaging laws but does not grant CalRecycle the authority to exclude products simply because a producer claims packaging is “necessary” and could not comply with SB 54. We appreciate that this provision now requires entities to notify CalRecycle of potential conflicts with federal regulations and demonstrate that alternatives are not reasonably available; however, this determination would be better handled through the exemption process where there is ongoing assessment of the exempted packaging and products to ensure that, wherever possible, producers switch from materials that are not able to comply with SB 54 to those that are – removing the incentive for producers to innovate and redesign their products and packaging. Instead of using the existing exemption process, the informal regulations now allow producers to avoid compliance with the law in perpetuity by using less recyclable materials and claiming they are necessary.

Second, the new draft regulations continue to exclude most over-the-counter medications (OTC) and their packaging from the program, which is inconsistent with the plain language of the statute and the clear legislative intent that the authors consistently reiterated. SB 54 specifically exempts prescription drugs and medical devices from the program, but that exemption does not include OTCs. Whether OTCs should be included in the program was contemplated as far back as 2019, when the first attempt at SB 54 was made and these products remained in the proposed program in all versions of the legislation that followed, including the version enacted in 2022.

Overly Permissive Reuse/refill Standards

The draft regulations issued in May made important streamlining revisions to the “refill and reuse” standards. However, to ensure that they do not create an unintended exclusion for materials that are not truly reusable or refillable, it is important that the regulations include a minimum standard. We remain concerned that the proposed regulations removed the requirement for the PRO to maintain records for the covered materials producers claim to be reusable or refillable.

The Legislature’s primary goal when passing SB 54 was not only to address the waste and pollution associated with single-use packaging and foodware, but to also control the

rising costs to everyday Californians associated with managing that waste, cleaning up the environment, and addressing public health impacts of plastic exposure. Residents across the state are paying significantly more in their rates today than they did a decade ago for trash collection and recycling. SB 54 is the only significant state policy in place intended to reduce the amount of materials that the state's local governments must manage through their solid waste systems and to reduce the associated costs to California's ratepayers. We appreciate that the most recent draft Standardized Regulatory Impact Assessment takes a more reasoned view of the potential costs and benefits of SB 54 implementation, including finding that SB 54 will generate tens of billions of dollars of net benefits to Californians.

We look forward to continuing to work with your administration as this critical program is implemented. The state deserves a solid foundation on which to base future actions. We call on you to ensure that CalRecycle revises the regulations to reflect the letter and intent of the statute.

[Attachments to this submission included separately in the rulemaking file]

Response to O-95-1

Comment rejected. No changes to the proposed regulations are appropriate in response to this comment because the comment expresses general concern with the regulations, including over non-specified "exemptions" and "exclusion of broad categories" of products, but does not address specific regulatory provisions or suggest any particular changes to them. The commenters also note that they "remain deeply concerned about the regulatory approach to the use of polluting technologies," without further elaboration or suggestion of how to address that concern.

To the extent this comment can be interpreted to concern particular provisions of the proposed regulations, CalRecycle identifies four changes the commenters might have intended to recommend. First, the commenters appear to request narrowing of the exclusion for packaging used by food and agricultural products. CalRecycle declines to do so because the currently proposed regulations are narrowly drawn (they exclude only packaging for certain goods when it is not reasonably possible to comply with both state and federal law), and they fulfill CalRecycle's statutory obligation to avoid conflicts with federal law. See, also, CalRecycle's responses to comments I-19-1, O-93-9, B-47-3, and O-90-3. Second, the commenters may have intended to object to CalRecycle's interpretation of the exclusion for medical products; CalRecycle rejects that objection for the reasons stated in responses to comments O-49-1 and B-11-3. Third, the commenters may have intended to object to the proposed regulations' implementation of Public Resources Code section 42041(af), which sets forth the criteria for items to be considered reusable or refillable. The relevant regulatory text (18980.2.1), however, does not expand what may be considered reusable or refillable; rather, it provides clarification of the statutory criteria as necessary for CalRecycle to enforce them. See, also, CalRecycle's responses to comments B-

6-2, I-30-2, B-38-3, O-75-3, and O-48-4. Fourth, the commenters express concern over the "regulatory approach to the use of polluting technologies." That approach, found in section 18980.4, is appropriate because statute unambiguously stops short of prohibiting any particular technologies. The regulation gives effect to the Legislature's intent, expressed in Public Resources Code section 42041(aa)(5), to allow new technologies (evidenced by the choice not to state any prohibition on particular technologies), but only those whose production of hazardous waste risks environmental harm and therefore must be considered production of a "significant amount" of such waste. The proposed regulations achieve that balance by disqualifying uses of technology that harm the environment, requiring operations to meet rigorous environmental management, sustainability, and traceability standards, and imposing significant disclosure and reporting requirements. See, also, CalRecycle's response to comment O-62-1.

Regarding the attachments that the commenters included with their submission (and which are included in the rulemaking record), those attachments address draft regulations that are not part of this rulemaking, so no separate responses to them are necessary. To the extent the commenters' comments on the current regulations incorporate or rely on the attachments or raise the same issues as those attachments raised, CalRecycle's responses to the comments have addressed the substance of the attachments. The attachments are included in the rulemaking file.

O-96: Circular Action Alliance (Emily Coven)

Comment O-96-1
RE: SB 54 Regulations

Dear Ms. Richmond,

Circular Action Alliance (CAA) and its members thank the Department for the opportunity to submit comments on the proposed regulatory text under the Plastic Pollution Prevention and Packaging Producer Responsibility Act, as codified in the California Public Resources Code at Sections 42040-42084 (Senate Bill 54).

CAA is a U.S. Producer Responsibility Organization (PRO) dedicated to implementing effective Extended Producer Responsibility (EPR) laws for paper and packaging. As a nonprofit, producer-led organization, CAA is committed to helping producers comply with EPR laws, delivering harmonized best-in-class compliance services and to working with governments, businesses and communities to reduce waste and recycle more.

CAA was founded in 2022 and is governed by producers representing the food, beverage, consumer goods, restaurant and retail industries. CAA’s 24 founding members are Amazon; The Campbell’s Company; The Coca-Cola Company; Colgate-

Palmolive; Conagra Brands; Danone North America; Ferrero US; General Mills; Georgia-Pacific; IKEA Supply AG; Keurig Dr Pepper; The Kraft Heinz Company; L'Oréal USA; Mars, Incorporated; McDonald's USA, LLC; Mondelēz International; Nestlé USA; Niagara Bottling, LLC; PepsiCo, Inc.; Procter & Gamble; SC Johnson; Starbucks Corporation; Target; and Walmart.

We appreciate that the Department has previously considered recommendations that CAA submitted on May 8, 2024, Nov. 4, 2024, Dec. 17, 2024, and June 3, 2025. We are pleased to submit our comments on the formal draft regulations published on Aug. 22, 2025.

We have provided our detailed comments in the attached submission, which include the following overarching priorities.

Clarify and Define Categorical Exclusion Process: The regulations allow a lengthy timeline for exclusions to be reviewed and acted on by the Department, creating program uncertainty and administrative burden for CAA. We propose modifications that will address these concerns.

Establish Achievable Reporting Timelines: Several key reporting timelines require CAA to submit data in a way that does not provide sufficient time for the data validation process that CAA must undertake to ensure compliance. We are proposing modified reporting deadlines to allow for sufficient data review, ensuring the program operates using the most accurate data possible.

Reduce Burdens on Reusable and Refillable Collection: The regulations set a standard for reusable and refillable packaging return infrastructure that does not align with the closest comparative system, the California Beverage Container Recycling Program, and does not allow for needed flexibility as CAA works with producers to establish collection pathways for these materials. CAA supports harmonizing reusable and refillable collection convenience requirements with those established for CRV, as well as broadening the scope of infrastructure that can be used to satisfy these requirements.

Reinstate Source Reduction Adjustment Language: The draft regulations continue to omit a section spelling out source reduction adjustments that would allow the PRO to account for future increases or decreases in the number of producers participating in the program, as well as economic fluctuations, to craft a practicable source reduction plan. This will create substantial challenges for CAA and producers as we work to meet source reduction targets.

Simplify De Minimis Exclusion Process: CAA proposes modifying the de minimis exclusion review process in a way that will allow us to provide clear guidance to producers before they report baseline source reduction data next year. Our proposed approach also reduces the reporting burden on producers and ensures the program operates with the most accurate data possible for source reduction planning.

We would like to thank CalRecycle for the ongoing collaboration with our team and the opportunity to provide our comments on the draft regulations. We would welcome the opportunity to meet with your team to discuss our comments in further detail.

Sincerely,
Emily Coven
California Executive Director
Circular Action Alliance

Response to O-96-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-96-2

Article 1: Definitions
Section 18980.1. Definitions
Section 18980.1(a)(4)

Regulatory text

(B) For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached.
(C) A "detachable component" is one that may be completely detached from all other components or material and is either of the following:
(i) A component designed such that it may be detached by consumers or during or after collection without the use of tools, substances, or non-manual processes. A component shall not be considered designed to be detached merely because it may be detached from all other components or materials during processing.
(ii) Typically or necessarily detached through ordinary usage by the consumer before being discarded, regardless of whether the component is discarded attached to the other components.

CAA Response

The text specifying that a "detachable component" is defined by certain characteristics "regardless of whether the component is discarded attached to the other components" is not consistent with the Association of Plastic Recyclers (APR) Design Guide, which recommends leaving plastic caps on bottles and containers when recycling.
This contrary position hinders both the calculation of actual recycling rates for components and the recyclability determination for components in a way that does not match current recycling practices.

The definition of detachable component is ultimately aiming at classifying covered materials in a way that reflects how a particular covered material will present itself in the waste stream. CAA, therefore, suggests the text be revised to reflect that "detachable component" does not refer to components that are designed to be reattached before disposal.

CAA Recommendation

Revise the section as follows:

(B) For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached, unless such component is designed to be reattached before disposal.
(C) A "detachable component" is one that may be completely detached from all other components or material, is not designed to be reattached before disposal, and is either of the following:
(i) A component designed such that it may be readily detached by consumers or during or after collection without the use of tools, substances, or non-manual processes. A component shall not be considered designed to be detached merely because it may be detached from all other components or materials during processing.
(ii) Typically or necessarily detached through ordinary usage by the consumer and is not designed to be reattached before being discarded~~, regardless of whether the component is discarded attached to the other components~~.

Response to O-96-2

CalRecycle rejects this suggestions for the reasons provided in response to comments O-39-5 and O-41-3.

Comment O-96-3

CAA Recommendation

Additionally, in conjunction with the above change, **Section 18980.3.2. Methodology for Recycling Rate Determination** should be revised to use the term "detachable component" consistently, as follows:
(d) Recycling rate shall be calculated for each covered material category, except as established in subdivisions (f) and (g).
(1) For covered material components that are not detachable components, a single recycling rate shall be calculated for the covered material category applicable to the item comprising those components rather than calculating a recycling rate for each component.
(2) For covered material components that are detachable components, a recycling rate shall be calculated using the covered material category applicable to each detachable component.

Response to O-96-3

CalRecycle rejects the proposed revision because it would add no clarity to the proposed regulatory text. The proposed additional verbiage would be redundant.

Comment O-96-4

Section 18980.1.1. Producer Identification

Section 18980.1.1(c)(1)

Regulatory text

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

CAA Response

CAA appreciates the amendments that have been made to this section in previous draft regulations but remains concerned about the complexity associated with the producer identification spelled out in Section 18980.1.1.

As noted in our June 2025 submission, we continue to question why several concepts CAA has proposed were not incorporated. These include:

• The use of "directing or performing the manufacturing" to identify the producer when multiple brands or trademarks are present. o This phrasing is already used in Oregon and Colorado, making it familiar to producers and easier to identify which company is obligated in the supply chain.

• The addition of the clause: "If the person owning the brand or trademark pursuant to this subdivision is a business operated wholly or in part as a franchise, the producer is the franchisor if that franchisor has franchisees that have a commercial presence within the state."

o This concept is also used in Colorado and would clarify the obligation for restaurant franchisors over franchisees.

We urge CalRecycle to develop guidance as soon as possible to ensure that there is clarity as to the obligated party.

Additionally, CAA recommends an edit to Section 18980.1.1(c)(2) to adjust the language to ensure it is harmonized to other states. As it stands, the language appears to capture the contract manufacturer in state as opposed to the brand owner, representing a major difference from all other states that have adopted packaging EPR legislation: Colorado, Oregon, Maine, Maryland, Minnesota and Washington.

CAA Recommendation

Revise Section 18980.1.1(c)(1) as follows:

(1) Subject to subdivision (e), the designated brand or trademark shall be one used with goods when they are first sold or distributed along with covered material or used with such initial sale or distribution, regardless of where such use occurs. The person who owns or licenses the brand and is directing or performing the manufacture~~ding~~ of the goods is the producer, provided that the person is in the state and either owns the

designated brand or trademark or is licensed to manufacture the goods. To be the producer, the licensee must have the legal right to use the brand or trademark on the goods in connection with manufacturing the goods and *is* ~~*be entitled to be the only person with such the legal right*~~ *offering the goods for sale or distribution* *in the state or in a subregion of the state.* Revise Section 18980.1.1(e) to add the following:
(6) If the person owning the brand or trademark pursuant to this subdivision is a business operated wholly or in part as a franchise, the producer is the franchisor if that franchisor has franchisees that have a commercial presence within the state.

Response to O-96-4

Comment rejected. The change to expand "the person who manufactured" to "the person who . . . is directing or performing the manufacturing" is contrary to Public Resources Code section 42041(w)(1), which is the only statutory provision under which a person's role as a manufacturer is relevant. The commenter's proposal to refer to one that "is directing the manufacturing" is ambiguous at best, and it is unnecessary because 42041(w)(1) unambiguously concerns the actual manufacturer (i.e., the one manufacturing). CalRecycle also declines to add the phrase "owns or licenses the brand" because that is redundant with the remainder of the sentence, which already requires that the person must own the brand or be licensed to use it in manufacturing.

CalRecycle also rejects the suggestion to remove the reference to exclusivity. Public Resources Code section 42041(w)(2) unambiguously states that there must be exclusivity for a person's status as a licensee to be relevant.

The proposed addition of "is offering the goods for sale or distribution" is also inappropriate because Public Resources Code section 42041(w)(1) and (w)(2) do not require a person to have any sale or distribution role to be a producer.

CalRecycle declines to add the proposed paragraph (6) because it is not grounded in statute and is unnecessarily focused only on the franchisor-franchisee relationship, even though other licensing arrangements may be functionally similar. Under the statute, a franchisor that owns the brand will always be the producer of the covered material sold or distributed under that brand because they are necessarily "in the state": California law requires all franchisors to consent to service of process in the state. Therefore, addressing the franchisor-franchisee relationship is unnecessary except to address the scenario where franchisees—which often have some degree of geographic exclusivity—might be considered the "licensee" producer referred to in 42041(w)(1) and (w)(2). The proposed regulations address that scenario and all scenarios where there is a secondary agreement, with a licensee (or franchisor that does not own the brand) issuing a sublicense (or a franchise) to the business that sells or distributes the relevant goods. In that scenario, the licensee (or franchisor) is deemed the one holding the relevant right to use the brand or trademark.

In contrast, the commenter's suggested change does not address the requirement that the producer be "in the state" (it only addresses the presence of franchisees, who would not be the producer) nor the requirement that they be a brand owner or licensee (if they are not the brand owner). It simply states that a

franchisor with franchisees in the state is the producer. This leaves producer identification unclear when a trademark is used by franchisees in the state and by other businesses licensed to use the trademark for other purposes. In contrast, the proposed regulations (18980.1.1(c)(3) and (d)(3)) make clear that the licensor/licensee (or franchisor/franchisee) relationship only determines the producer of covered material used pursuant to the agreement establishing relationship.

The commenter's proposed paragraph (6) is also inappropriate because it is misplaced. Subdivision (e) concerns the designation of the brand referred to in Public Resources Code section 42041(w)(1) and (2), but the commenter's addition would concern identification of the producer, which subdivisions (c) and (d) address.

Regarding the proposed change to section 18980.1.1(c)(2), the only basis is to "ensure it is harmonized to other states." However, the proposed regulations cannot harmonize the California statute with other states' laws if it unambiguously requires outcomes inconsistent with those laws. Under the California statute, if a contract manufacturer falls within the definition of "producer" under Public Resources Code section 42041(w)(1), the proposed regulations cannot change that outcome. However, the parties to a manufacturing agreement exert considerable control over that outcome because a licensee can only be a producer if its rights are exclusive.

Comment O-96-5

Article 2: Covered Material and Covered Material Categories

Section 18980.2. Categorically Excluded Materials

Section 18980.2(a)(2)

Regulatory text

(A) Any entity that has determined that packaging is not covered material pursuant to paragraph (2) of subdivision (a) shall notify the Department and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination. The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations, rules, or guidelines, and explain why no reasonably possible alternative packaging or packaging component is available. The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, the specification for the packaging and the associated product(s), and the status of any review by the Department of such determination.

(B) At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days. If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity, which shall respond within 60 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the

Department shall determine whether the packaging or packaging component qualifies for the exclusion. If the Department determines that the packaging or packaging component does not qualify for the exclusion, then it shall be considered covered material 180 days following the Department's decision.

CAA Response

Although the language does not explicitly state this, subparagraphs (A) and (B) imply that as soon as an entity notifies the Department that it has determined that packaging is not covered material, that packaging becomes categorically excluded. The timelines laid out in (B) include: unspecified time for the Department to review and request additional information, 60 days for the entity to provide additional information once requested, additional unspecified time for the Department to review the additional information and make a decision that the packaging is indeed covered, and 180 days for that packaging to become covered again. That means that a minimum of 240 days (and easily 12 months or more) will occur between the day that the packaging becomes excluded and the day that the packaging is considered covered again.

Because of this lengthy timeframe, the system easily could be used by entities to avoid paying fees for extended periods of time lasting anywhere from several months to years. Even if CalRecycle were to process all submissions the same day they were received, the regulations build in a minimum of 240 days when the packaging will be considered excluded, representing two-thirds of the year. So even if a producer is certain that their packaging is covered, they are incentivized to make an exclusion determination because it will save them at minimum 66% of their annual fees, and potentially much more.

Further, the fact that packaging can become excluded on any date throughout the year would necessitate proration of reporting weights and associated fees on the year of the determination (unless the determination is submitted on January 1). This would introduce a significant administrative burden to the PRO, which would not only make the program run less smoothly, but would unnecessarily raise the overall cost of running the program. A successful packaging EPR program relies upon a consistent annual cycle of reporting and fee-setting.

CAA Recommendation

CAA urges CalRecycle to make the following changes:

• Require exclusion determinations to include estimated weights. This data will allow the PRO to adjust its budget and fees accordingly, especially if substantial amounts of packaging are unexpectedly excluded.

• Require exclusion determinations to be submitted annually in the month of January. This significantly reduces the administrative burden and costs for the PRO, and more importantly, also provides the PRO with certainty when fee-setting, budgeting, etc. Because producers need to submit a source reduction baseline report by July 1, 2026, and because exclusion determinations will affect supply included in those reports, CAA also proposes to require initial exclusion determinations to be submitted within 30 days of the effective date of the Regulations.

• If the Department determines the packaging is covered, require the entity to report the packaging and to pay fees retroactive to the date it originally notified the Department of its exclusion determination. This will eliminate the possibility of producers getting a "free ride" for anywhere from months to years.

• Add an interest payment to retroactive fees. Without the additional disincentive of the interest payment, there's still the possibility of entities submitting exclusion determinations to effectively get an interest-free loan from the PRO via deferred fee payments.

Per the above, CAA recommends the following modifications to the language in Section 18980.2(a)(2):

(A) Any entity that has determined that packaging is not covered material pursuant to paragraph (2) of subdivision (a) shall notify the Department and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination. The entity shall also provide estimated annual weight of the packaging or packaging component. The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations, or rules~~, or guidelines~~, and explain why no reasonably possible alternative packaging or packaging component is available. The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, the specification for the packaging and the associated product(s), and the status of any review by the Department of such determination. The entity shall notify the Department within 30 days after the effective date of the Regulation, and between January 1 and January 31 annually starting on January 1, 2027.

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

(C) If the entity is a participant producer, or would be required to be a participant producer in the absence of categorical exclusions, and if the Department has not yet made a determination per section (B) at the time of the entity filing its producer report with the PRO based on packaging supplied in the same year that entity made the exclusion determination, or any subsequent year, the entity shall omit the excluded packaging from the producer report. If the entity is a participant producer, or would be required to be a participant producer in the absence of categorical exclusions, and the Department determines that the packaging does not qualify for the exclusion, and if the entity has filed one or more producer reports to the PRO with the packaging omitted, the entity shall amend all such reports to include the packaging considered as covered material, retroactive to the date when the entity submitted its initial determination to the Department. Any fees due to the PRO as a result of such amended reports, including calculations for malus fees or credits, shall be paid to the PRO along with 10% annual interest compounded monthly starting with the date the entity submitted its initial

determination and ending with the date the Department determined that the packaging does not qualify for the exclusion.
~~(C)~~ (D) In implementing this paragraph, the Department shall withhold from public disclosure any information that the entity appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.14.

Response to O-96-5

Comment partially rejected and partially accepted. The commenter requests that 18980.2(a)(2)(A) require an entity claiming that packaging is not "covered material" to provide the estimated annual weight of the packaging and submit annual notices. CalRecycle declines to make that change because it would be inconsistent with the principal effect of 18980.2(a)(2): When the exclusion applies, the packaging at issue is not "covered material" and thus not subject to the Act. The commenter also requests that an annual notification requirement be added to subparagraph (A). CalRecycle rejects the annual notification suggestion for three additional reasons. First, it would not have any practical effect in most instances because the absence of an annual submission would have the same effect as an annual submission: In either case, the circumstances would reveal whether the exclusion continues to apply. Second, the proposed change would unnecessarily restrict CalRecycle's ability to determine how to administer the Act most efficiently. Under the regulation as written (and as revised; see below), CalRecycle can review each submission and determine on a case-by-case basis when, based on the circumstances specific to the claimed exclusion, to require submission of additional information. Nothing precludes CalRecycle from doing so one year after the most recent submission, or at any other time. CalRecycle's ability to require additional information when appropriate ameliorates the commenter's concern over uncertainty and burden. Third, requiring that the suggested annual submissions be made in January would impose inconsistent, arbitrary burdens on businesses based on when during such annual cycle the need to avail themselves of the exclusion allowed under 18980.2(a)(2) arises.

CalRecycle also declines to add the specific text proposed as a new subparagraph (C). First, its requirements build upon the recommended changes that CalRecycle has declined to make elsewhere, as explained above. Second, the proposed changes would effectively treat any entity as producer if the entity submits a notice that an exclusion applies. However, packaging that is not "covered material" is not subject to the Act and cannot render an entity a producer for any reason. Third, the proposed changes are inconsistent with the process described in subparagraph (B) (revised to subparagraph (E) in updated proposed regulations). The suggested new subparagraph (C) would mischaracterize that process as involving CalRecycle conducting a complete, substantive review before the exclusion could be considered to apply. Except as clarified in the revised text (see below), the proposed regulation does not entail such a delay. Lastly, CalRecycle rejects the suggested retroactivity of fees, with interest, because implementing it would require CalRecycle to accept the other

provisions the commenter proposes as subparagraph (C), which CalRecycle has otherwise rejected as described in this paragraph.

CalRecycle declines to delete the term "guidelines" for the reasons described in response to comment I-59-2 but, as described below, has revised the text in a manner that likely addresses the commenter's concern with it (the commenter does not set forth that concern).

CalRecycle otherwise accepts this comment. In particular, CalRecycle has revised 18980.2(a)(2) to address the commenter's main concern (that illegitimate claims that the exclusion applies will enable entities to avoid obligations under the Act). CalRecycle's response to comment I-19-1 further explains the revisions responsive to the commenter's concerns and those raised in similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-96-6

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

Section 18980.2.1(a)(4)

Regulatory text

(A) Unless the item was delivered directly to a consumer, there is at least one location for returning the item that is either:
(i) the same location where the item was obtained or delivered; or
(ii) within one mile of the location where the original item was obtained and has hours of operation that encompass, at a minimum, the hours of operation of the location where the item was obtained.
(B) If the item was ordered via remote means (e.g., Internet, phone, or any method not requiring the purchaser to visit any particular physical location) and was delivered directly to a consumer, the same means must be available for return of the item without requiring travel to a location other than the delivery location. If the item was ordered by visiting a particular physical location, such as a retail store, and was delivered directly to a consumer, return of the item must be able to be arranged via remote means or by visiting that physical location or a location described in clause (ii) of subparagraph (A).

CAA Response

CAA is exploring curbside collection of reusable and refillable packaging and food service ware as a potential substitute for setting up collection points. As written, the language does not appear to allow for such an alternative to be considered adequate infrastructure, instead requiring that the packaging or food service ware must either be able to be returned via return-to-retail or redemption centers.

CAA Recommendation

Add text making curbside collection a clear alternative option to satisfy infrastructure requirements for reusable and refillable packaging and food service ware in sections 18980.2.1(a)(4)(A) and 18980.2.1(a)(4)(B):
(C) A curbside collection program that accepts reusable and refillable packaging and food service ware may be established in place of or alongside physical return locations, and shall satisfy infrastructure requirements in subparagraph (C) of paragraph (1) of subdivision (af) of section 42041 of the Public Resources Code.

Response to O-96-6

CalRecycle rejects this comment for the reasons set forth in response to comment O-84-3.

Comment O-96-7

Section 18980.2.1(a)(4)(A)(ii)

Regulatory text

(A) Unless the item was delivered directly to a consumer, there is at least one location for returning the item that is either:
(i) the same location where the item was obtained or delivered; or
(ii) within one mile of the location where the original item was obtained and has hours of operation that encompass, at a minimum, the hours of operation of the location where the item was obtained.

CAA Response

This text requires infrastructure to ensure the packaging or food service ware can be returned within one mile of the location where it was obtained. This is a more extensive requirement than that of the California Beverage Container Recycling Program, which establishes beverage container convenience zones to be within one mile of a supermarket, and up to five miles in rural regions.

Therefore, as written, the draft regulations create a higher burden on reusable and refillable packaging and food service ware compared with Beverage Container Recycling Program containers both in the convenience zone radius (within one mile for all reusable and refillable packaging, versus between one and five miles for CRV), and in the type of establishment at the center of the convenience zone (any place the item is obtained in the case of reusable and refillable packaging, versus a supermarket specifically for CRV).

The differences between one and five miles, and between any retail location where the refillable packaging was obtained versus a supermarket, come with massive costs. Modeling completed for CAA estimates it could require 22,503 return points to implement the requirements as written in the current draft regulations, compared to

between 2,000 and 3,000 to implement if the Beverage Container Recycling Program convenience zone criteria were used for reusable and refillable packaging. CAA estimates this represents a cost difference of between $1 billion and $2 billion between 2026 and 2032.

CAA Recommendation

CAA proposes that the refillable and reusable packaging return infrastructure requirements be aligned with the requirements for Beverage Container Recycling Program convenience zones, including the five-mile radius in rural regions.

Response to O-96-7

CalRecycle rejects the commenter's proposal. It is nonsensical to suggest that assessing convenience of a return location with respect to the acquisition location is not the most effective way of comparing the convenience of going to that return location to the convenience of purchasing a new item from that location or a nearby location instead. The commenter asserts that other locations are likely to be more convenient but provides no explanation of how such locations can be identified with respect to each location where products are originally sold. The suggested rule is therefore highly subjective and inexact, offering no greater precision and objective measurability than what is stated in statute. In contrast, a collection point near the place of acquisition is necessarily as convenient as was obtaining the original product. Moreover, nothing in the proposed regulation prevents a reuse system operator from attempting to find the "most convenient" locations for collection points. The proposed regulations merely establish what the minimum required degree of convenience.

Comment O-96-8

Section 18980.2.2. Exclusion of Certain Types of Packaging
Section 18980.2.2

Regulatory text

(a) Pursuant to subparagraph (F) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code, packaging used for the long-term protection or storage of a good having a lifespan of not less than five years is not covered material. Upon request by the Department, any person claiming not to be subject to the Act with respect to particular packaging on the basis that subparagraph (F) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code excludes the packaging from the definition of covered material shall substantiate such a claim....
...
(b) Pursuant to subparagraph (A) of paragraph (4) of subdivision (s) of section 42041 of the Public Resources Code, material that is part of or directly connected to packaging but is of de minimis weight or volume is not itself packaging for purposes of the Act. ...
(b) (3) The PRO or an Independent Producer may request that the Department deem certain components or groups of components to be of de minimis weight or volume.

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

CAA Response

Section 18980.2.2. describes the process for two specific exclusions for "packaging used for the long-term protection or storage of a good having a lifespan of not less than 5 years" and for "material that is part of or directly connected to packaging but is of a de minimis weight or volume."

In the first exclusion above, the regulations simply lay out the criteria that must be met in order for producers to claim an exclusion for such packaging meeting the criteria, and only upon request from the Department would such claims need to be substantiated by the producer.

However, for the exclusion for material that is part of or directly connected to packaging but is of a de minimis weight or volume, the PRO or Independent Producer must first request that the Department deem that such components or group of components meet the criteria. Claimants must submit requests in writing and describe each component or group of components at issue with sufficient detail, such as its purpose, range of physical characteristics, and the types of packaging or goods with which it is conventionally used, to clearly distinguish it from other materials. The request must include supporting evidence and explanation establishing that the component or group of components meets the requirements laid out in that section. The Department is required to publish on its website a list of components and groups of components that it has determined to be of a de minimis weight or volume.

Given that language in statute for both exclusions above, as found respectively in PRC 42041(e)(2)(F), and PRC 42041(s)(4)(A), uses the term "as determined by the department," presumably CalRecycle has the authority to use the same approach regarding the treatment of exclusions under these two provisions. Given this, CAA recommends that CalRecycle amend Section 18980.2.2(b) to align with Section 18980.2.2(a) so that only upon request from the Department would such claims that components and groups of components that are deemed by the PRO to meet the de minimis criteria outlined in Section 18980.2.2(b)(2) be substantiated by the PRO making the claim. Making this change would allow for CAA to provide clear de minimis guidance to producers prior to the reporting of 2023 baseline data next year. This approach will reduce the reporting burden on producers and increase the accuracy of data reported for source reduction planning.

Response to O-96-8

Comment rejected. The commenter reads into the proposed regulation a requirement that no material can be of de minimis weight or volume without CalRecycle's preapproval. However, section 18980.2.2(b)(4) expressly acknowledges that CalRecycle may determine that items are of de minimis weight or volume when such status is brought to its attention in response to a notice of violation. In other words, the absence of an advance determination by CalRecycle does not preclude claims that components are of de minimis weight or volume.

Comment O-96-9

Section 18980.2.4. Exemptions for Certain Covered Materials

Section 18980.2.4(a)

Regulatory text

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

CAA Response

The draft regulations outline an exemption process through which covered materials can become exempt from SB 54 requirements. Under this process, producers must demonstrate that compliance presents unique challenges or health and safety concerns. As currently drafted, this exemption allows producers to continue selling these products but not meet targets they would otherwise need to meet.

CAA seeks confirmation that in these cases, the exempted materials are also removed from the PRO's targets, particularly the source reduction baseline targets. Otherwise, if these materials are exempt from requirements around recycling, recyclability and source reduction, but are still considered part of the source reduction baseline, they create a particular burden because other producers will need to source reduce additional volumes to make up for these exempt materials, which in actual practice per the regulations, are only partially exempt.

CAA strongly believes that if a material is considered exempt from covered material requirements, it should not have covered material targets associated with it.

Response to O-96-9

Comment rejected. Although the commenter only "seeks confirmation" about the proposed regulations, CalRecycle interprets it as requestion that the proposed regulations be changed to produce the result the commenter desires: that covered materials exempted pursuant to Public Resources Code section 42060(a)(3) and (a)(4) not be considered "covered material" for purposes of

source reduction and recycling rates. CalRecycle declines to make that change because it would contradict the Legislature's intent and the plain language in statute. The Legislature included two main ways for statutory requirements to be relaxed with respect to single-use packaging and plastic single-use food service ware. First, the statute establishes that certain items are not "covered material" to begin with (Public Resources Code section 42041(e)(2)). Second, the statute provides two ways for CalRecycle to "exempt covered material" (Public Resources Code section 42060(a)(3) and (a)(4)). Only in the former case are items deemed not "covered material," proving the Legislature's intent that exemptions do not affect the targets that producers must achieve and, to the extent exemptions make doing so more difficult, producers' burdens include removing that difficulty by addressing need for the exemptions. Accordingly, these provisions must be interpreted differently, such that, for the exemptions under 42060(a)(3) and (a)(4), the exemption applies to the requirements placed on materials themselves, which are still "covered material," but not to those placed on producer with respect to their covered materials.

Moreover, the proposed regulations contemplate and account for the commenter's concern. As explained in section 18980.2.4(f), exemptions under Public Resources Code 42060(a)(3) will only be granted if they will promote satisfaction of the statute's requirements in a manner consistent with the policy goals and priorities incorporated into it, and exemptions under section 42060(a)(4) will only be granted if they will not make it more difficult for other producers to satisfy their obligations under section 42050.

Lastly, and further supporting the above understanding of the Legislature's intent, under the commenter's recommendation there would be no incentive for the PRO and producers to eliminate the difficulties that justify exemptions. In fact, the PRO and all producers would have strong incentive to procure those difficulties, thereby reducing individual producers' burden under the statute while rendering it easier for the PRO to fulfil source reduction and recycling rate requirements. The Legislature could not reasonably have intended CalRecycle's granting of exemptions to have such perverse effects.

Comment O-96-10

Article 3: Evaluations of Covered Material and Covered Material Categories

Section 18980.3.3. Eligibility to be Labeled Compostable

Section 18980.3.3(c)(4)(A)

Regulatory text

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

...

(ii) Identify all substances present in the covered material items, including those that are used as ingredients to produce the items or are adhered to the items. Upon request by the Department, the Independent Producer, PRO, or producers of the covered material shall provide a written description of any substance identified pursuant to this

paragraph. The description shall demonstrate that the substance does not constitute plastic.

CAA Response

This section requires producers to maintain certain documentation but then requires the PRO to be able to reference that documentation upon CalRecycle's request.

CAA recommends removing the reference to the PRO in section 18980.3.3 (c)(4)(A)(ii), ensuring consistency with section 18980.3.3(c)(4)(A), which places the responsibility for maintaining documentation exclusively on producers. This approach will ensure accurate reporting, support regulatory compliance, and align responsibility with those who have direct control over product composition.

CAA Recommendation

Amend section 18980.3.3(c)(4)(A)(ii) to remove reference to the PRO:

Upon request by the Department, the Independent Producer, ~~PRO,~~ or producers of the covered material shall provide a written description of any substance identified pursuant to this paragraph. The description shall demonstrate that the substance does not constitute plastic.

Response to O-96-10

Comment rejected. The cited provision (18980.3.3(c)(4)(A)(ii)) imposes no general obligation on the PRO to request the documentation described in (c)(3)(A), removing the reference to the PRO cannot have any of the effects identified by the commenter. If anything, establishing that the PRO can, as it deems appropriate, obtain information about covered material claimed to be compostable can only enhance the PRO's general knowledge and ability to implement its program. Accordingly, no change is justified.

Comment O-96-11

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

Section 18980.3.4(b)(4)

Regulatory text

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

...

(4) That postconsumer recycled content used in covered material can be validated by the Association of Plastic Recyclers through its APR Postconsumer Resin Certification Program for purposes of validating the comparison described in paragraph (1). Alternatively, the plan may propose a different third party to perform the validations. ...

CAA Response

As CAA has previously commented, the requirement for the use of APR's Postconsumer Resin Certification Program, or alternatively a different third party to perform the validation, implies that there can only be one certification program used to validate post-consumer recycled (PCR) content for the purpose of the alternative compliance formula. This requirement is not aligned with the statute, where PRC 42057(a)(2)(B) clearly states that "A producer shall only receive this alternative source reduction credit if the postconsumer recycled content is able to be validated and is

validated by a third party, such as the Association of Plastic Recyclers, through its APR Postconsumer Resin Certification Program, or a similar third party approved by the department…."
CAA supports allowing multiple third parties to validate PCR content, as per statute, and recommends that the draft regulatory text reflect that.
Additionally, the draft regulations are not clear on the role of the "different thirdparty to perform the validations." Validations for third-party certifications are performed by certification bodies (who are the ones accredited to ISO 17065). The regulations currently endorse APR (a standard owner, which does not conduct validations) and seemingly an alternative third-party certification body. These are not the same and should be consistent. CAA recommends the regulations lay out a process to approve certification standards, not certification bodies. Each standard already endorses selected ISO 17065-compliant certification bodies to serve on their behalf.
As suggested in the recommended regulation change, CAA proposes an approach to allow certification standards to be used to validate PCR content in source reduced packaging. In the program plan, CAA will recommend a criteria-based framework method for evaluating valid certification standards. In a criteria framework, an open, holistic set of credible certification requirements will be identified, and standard owners can apply for approval, displaying how their program meets or exceeds the requirements. This will allow for endorsement of all qualified third-party certifications employed by producers.
The criteria will be compiled using certification best practices agreed via cross industry resources – namely, the Federal Trade Commission (FTC)'s Green Guides, U.S. Plastics Pact PCR Certification Principles, ISEAL Code of Good Practice, and ANSI Accredited Standard Development Process. Such requirements include the use of ISO 17065-compliant certification bodies, transparent consensus development with opportunity for public comment, adherence to identified ISO 22095 chain of custody methods, and ISO 14021 definitions of post-consumer content.
CAA Recommendation
Amend section to allow multiple third-party PCR certification standards to be approved by CalRecycle:
Regulatory text
(b) The Department shall approve an alternative compliance formula as part of a PRO's plan only if the plan establishes the following:
...
(4) That postconsumer recycled content used in covered material can be validated by the Association of Plastic Recyclers through its APR Postconsumer Resin Certification Program for purposes of validating the comparison described in paragraph (1). Alternatively, the plan may propose ~~a different~~ other third-party standards to ~~perform the validations~~ which validations may be performed against. ...

Response to O-96-11

Comment rejected. Requiring a producer responsibility plan to identify a single certification program is appropriate because it ensures consistency and comparability among the producers to which the alternative compliance formula is applied. This approach is consistent with statute. For one, statute is

ambiguous: It does not explain whether "a third party" refers to one third party for all validations or any third party for each individual validation. Accordingly, CalRecycle has exercised its authority to interpret statute as appropriate, given the context. Moreover, even if the phrase "a third party" were not ambiguous, statute expressly authorizes CalRecycle to exercise its discretion over whether to approve any third party. It is within CalRecycle's discretion, for example, to determine that approving only one certifier in connection with any producer responsibility plan is reasonably necessary to ensure that the alternative compliance formula applies to participating producers uniformly.

Comment O-96-12

Article 4: Responsible End Markets
Section 18980.4. Responsible End Market Criteria
Section 18980.4(a)(4)

Regulatory text

(B) Covered material partially or wholly comprising plastic and intentionally included in the process used to generate a recycled organic product must fully biologically decompose, and the recycled organic product must meet standards necessary to be sold into the marketplace. Full biological decomposition of compostable plastic refers to the complete biodegradation and disintegration of the material under controlled composting conditions, resulting in its conversion to carbon dioxide, water, biomass, and inorganic compounds, with no visible, distinguishable, or toxic residues remaining after the composting cycle. The entity must neither dispose of undecomposed material intentionally included in the process nor send it to another entity that subsequently disposes of it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).
(C) For covered material comprising fiber or paper substrates (without a plastic component) or wholly derived from natural resources not of mineral or fossil fuel origin, the covered material intentionally included in the process used to generate a recycled organic product must biologically decompose and may be processed in a manner consistent with the management of other feedstocks to produce a marketable product that complies with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable.

CAA Response

As written, the language creates stricter decomposition requirements for compostable plastic than for compostable fiber or paper substrates. As CAA has previously commented, composting of packaging is still a relatively new process, and compostable

plastic, as well as feedstocks derived from other natural resources, face unique processing challenges. They cannot and should not be held to a stricter standard than other materials. CAA believes its incentive-based approach and funding eligibility requirements can play a significant role in ensuring all certified compostable packaging is managed appropriately.

CAA Recommendation

CAA recommends that compostable plastic and other non-fiber materials recycled into an organic product be subject to the same decomposition requirements as those pertaining to fiber or paper substrates (without a plastic), meaning allowing compostable plastics to be processed in a manner that produces a marketable feedstock that complies with the California Code of Regulations.

Response to O-96-12

CalRecycle rejects this comment. See the response to comment B-6-5.

Comment O-96-13

Article 6: Requirements for the Producer Responsibility Organization
Section 18980.6.5. Annual Reports
Section 18980.6.5
Regulatory text
(a) A PRO shall submit the annual report required by section 42051.3 of the Public Resources Code in two phases, as provided in this section.
(b) The first phase shall be submitted no later than July 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this phase, a PRO shall submit to the Department the information described in subdivisions (a)(2) and (a)(3)(B), (C), (D), and (E) of section 42051.3 of the Public Resources Code, as well as any results of the independent audit described in subdivisions (b) and (c) of section 42054 of the Public Resources Code.
(c) The second phase shall be submitted no later than October 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this phase, a PRO shall submit to the Department the information described in (a)(3)(A) of section 42051.3 of the Public Resources Code.
CAA Response
CAA appreciates the two-phased reporting mechanism that will allow for different information to be reported in July and October of each year.
As currently written, under section 18980.6.5. (b), the draft regulations require source reduction data to be reported in the first phase of the annual report, due July 1 of each year. The source reduction data is identified by subdivision (a)(3)(E) of PRC 42051.3.
The source reduction data will rely on supply data that producers will submit to CAA on May 31 of each year. As CAA has consistently communicated to CalRecycle and producers, the May 31 annual supply data deadline was selected to harmonize

producer reporting requirements across all U.S. states with EPR programs.
This timeline means that, for source reduction data to be included in first phase of the annual report due July 1, data would need to be rigorously reviewed and finalized into a finished annual report in less than four weeks. This is not a feasible timeline to review and report accurate data.
To fix this problem, CAA proposes moving the source reduction data reporting requirement to the second phase of the annual report, due Oct. 1 of each year. This will allow for significantly more time for data review.
The first-phase report in July would still include information about the PRO's finances, names and contact information for each plan participant, a description of outreach and education activities, and a report on activities the PRO has taken to implement each provision of the plan, as outlined in PRC 42051.3.
CAA Recommendation
CAA proposes the following changes to the text to move the source reduction data reporting requirement into the second phase of the annual report:
(a) A PRO shall submit the annual report required by section 42051.3 of the Public Resources Code in two phases, as provided in this section.
(b) The first phase shall be submitted no later than July 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this phase, a PRO shall submit to the Department the information described in subdivisions (a)(2) and (a)(3)(B), (C), and (D)~~, and (E)~~ of section 42051.3 of the Public Resources Code, as well as any results of the independent audit described in subdivisions (b) and (c) of section 42054 of the Public Resources Code.
(c) The second phase shall be submitted no later than October 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this phase, a PRO shall submit to the Department the information described in (a)(3)(A) and (a)(3)(E) of section 42051.3 of the Public Resources Code.

Response to O-96-13

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.3, 42057, and 42060, and the recommended change is not necessary to the implementation of the Act. PRC section 42051.3(a)(1) requires a PRO to annually submit to CalRecycle an annual report and budget that describes how the PRO is implementing the approved plan and how the PRO has complied with the requirements of the Act. PRC section 42051.3(b) provides that the annual report must describe the PRO's progress made toward meeting or exceeding the requirements of PRC section 42050, including the source reduction requirement of PRC section 42050(a), and must include an evaluation of whether the PRO is reasonably likely to meet those requirements. PRC section 40251.3(a)(3)(E) specifically requires the annual report to include the source reduction data specified in PRC section 42057(c). Section 18980.6.5 of the proposed regulations implements these requirements by establishing a two-phase annual report submission timeline: (1) the first phase, due July 1 of each year, must

include all retrospective data required under PRC section 42051.3(a)(3) concerning the prior year's performance and financials (18980.6.5(b)); and (2) the second phase, due October 1 of each year, must include all prospective data required under PRC section 42051.3(a)(3) concerning the upcoming year's budget and fee schedule (18980.6.5(c)). The requirement for source reduction data to be included in the first phase of the annual report on July 1 of each year is necessary to ensure CalRecycle can effectively oversee the implementation of the Act and perform its enforcement duties. As set forth under PRC sections 42050(a) and 42057(a), the PRO is required to achieve specified source reduction targets by 2027, 2030, and 2032. A submission deadline of July 1 is necessary to ensure CalRecycle has sufficient time and opportunity to review and evaluate such data to determine whether a PRO is complying with its source reduction requirements prior to the effective date of any source reduction target. An alternative submission deadline of October 1 would not provide CalRecycle with sufficient time to perform its oversight and enforcement duties prior to January 1 of the relevant years. Additionally, because source reduction data under PRC section 42057(a)(3)(A) is based on the prior year's performance, a submission deadline of October 1—nine full months after the prior year has concluded—would cause unnecessary delay to CalRecycle's ability to enforce against violations that occurred during that year. Therefore, the proposed timeline for the inclusion of source reduction data under PRC section 42051.3(a)(3)(E) in the first-phase of the annual report strikes an appropriate balance between giving producers and a PRO sufficient opportunity (six months) to compile, prepare, and submit such data from the prior year once that year has concluded and providing CalRecycle with sufficient opportunity (six months) to review and evaluate the data for compliance in advance of any relevant enforcement timelines, without allowing for the unnecessary or extended delay for any necessary enforcement actions to be initiated.

Comment O-96-14

Section 18980.6.7. Eco-Modulated Fee and Fee Schedule
Section 18980.6.7(f)

Regulatory text

(A) In setting the base fee rates, a PRO shall include a justification of each rate, or of the methodology used to derive rates.

CAA Response

CAA is building upon its existing fee-setting methodology and is exploring the option of including a base unit fee per plastic component that complements the weight-based fees. As written, the draft regulations do not specify whether alternative fee structures are permissible beyond the weight-based fee mechanism. CAA proposes adding text that offers flexibility for the PRO include additional features in the fee structure that can be leveraged to meet and encourage producer behavior to achieve the SB 54 goals.

CAA Recommendation

Revise the section to read:

(A) In setting the base fee rates, a PRO shall include a justification of each rate, or of the methodology used to derive rates, in addition to any other alternative fee structure that the PRO may consider for approval in the plan.

Response to O-96-14

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(a) makes clear that the PRO is responsible for establishing and developing a producer fee schedule, including fees that are adjusted using malus fees or credits based on the factors specified in PRC section 42053(e). Section 18980.6.7 of the proposed regulations implements these requirements by clarifying that the PRO retains significant discretion is establishing the producer fee schedule and developing methodologies for setting producer fees. Specifically, section 18980.6.7(e) permits the PRO to set applicable base fee rates and only requires the PRO to provide CalRecycle with a justification of each rate or of the methodology used to derive rates. Therefore, CalRecycle's review and oversight role will be limited to a determination of whether the rate or methodology utilized by the PRO is reasonable and appropriate. The proposed regulations already provide the PRO with sufficient flexibility and discretion to utilize appropriate methodologies in establishing the producer fee schedule, including by incorporating a base unit fee per plastic component. No further changes are necessary.

Comment O-96-15

Section 18980.6.7

Regulatory text

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code.
(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic covered material derived from renewable materials.

CAA Response

In statute, PRC 42053(e) states that the PRO may choose “any” of a list of ecomodulation factors to adjust fees using malus fees and credits, with a producer’s inclusion of certain chemicals or use of renewable materials as just two options on that

list. However, as written in the draft regulations, Section 18980.6.7 subsections (i) and (j) make a malus for use of certain chemicals and a credit for a producer's use of renewable materials mandatory, rather than optional. CAA believes the draft regulations go beyond what is outlined in statute.

CAA Recommendation

Revise the text to reflect that the PRO has the option to adjust fees based on any of the eco-modulation factors, but that it's not mandatory to adjust fees based on a specific factor:

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 of the Public Resources Code, a PRO may ~~shall~~ charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code.
(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO may ~~shall~~ provide a credit for producers who use plastic covered material derived from renewable materials.

Response to O-96-15

CalRecycle rejects this comment. See the response to comment O-91-11. PRC section 42053(e) requires a PRO to adjust producer fees using malus fees or credits based on the factors specified in that section, including the factors implemented in sections 18980.6.7(i) and (j) of the proposed regulations. However, the PRO has significant discretion in determining the amount of such adjustments. No change is necessary.

Comment O-96-16

Article 8: Producer Responsibility Plan Requirements
Section 18980.8.3. Source Reduction Adjustments
This section was removed entirely in the May 2025 draft regulations.

CAA Response

As CAA has outlined in previous comments, the deletion of this section is concerning because it provided much needed clarity regarding the adjustment factors that will be required to account for the increase or decrease in the number of producers participating in the producer responsibility plan and fluctuations in economic conditions. For the PRO to be able to set enforceable source reduction agreements with its producers and, further, to enact plans to achieve the source reduction targets, the PRO must have the ability to account for economic fluctuations, or risk falling short of targets despite best efforts due to impacts that are outside of its control.

CAA Recommendation

Reinstate the entire section.

Response to O-96-16

Comment rejected. The commenter references the removal of "Section 18980.8.3," but the currently proposed regulations are the only regulations relevant to this rulemaking. Without including that section for CalRecycle to consider, there is no alternative text for CalRecycle to consider. Nevertheless, CalRecycle understands the commenter to propose some method for the PRO's plan to allow adjustment of its source reduction requirements. CalRecycle declines to make such a change because it would be unnecessary and contrary to statute, which contemplates no adjustment to the requirement stated in Public Resources Code section 42057(a). Moreover, the statute does not preclude the PRO plan from having provisions accommodating fluctuating economic conditions, and the Act already has multiple provisions accounting for the problem the commenter describes. Section 42057(f)(1) requires the PRO to give credit to producers that achieved reductions from 2013 to 2022. Section 42057(g) requires the PRO to penalize producers that add new covered material and to optimize their packaging; in other words, when a producer expands its usage of covered material, statute clearly intended that the producer would face an enhanced burden. Lastly, 42057(h) is expressly directed at "ensur[ing] source reductions achieved by January 1, 2032, are not lost after [that date] while still allowing for businesses to grow." These provisions reflect a clear intent for the PRO not to have flexibility to alter how the PRO's overall source reduction will be evaluated (i.e., neither the goal nor the calculation of source reduction can be adjusted). To the extent fluctuating economic conditions put satisfaction of the source reduction requirement at risk, statute clearly puts the burden on the PRO to account for that risk.

Comment O-96-17

Article 9: Source Reduction Baseline Report and Annual Reports
Section 18980.9.1. Annual Reports
Section 18980.9.1(d)

Regulatory text

(d) For the PRO, the annual report shall additionally include:
(1) In the second phase of the annual report, as described in subdivision (c) of section 18980.6.5, fee schedule amendments pursuant to subdivision (e) of section 42053 of the Public Resources Code as a result of adjustments, including calculations for malus fees or credits.
(2) In its first phase of the annual report, as described in subdivision (b) of section 18980.6.5, the following information with respect to source reduction:
(A) Percentage of reduction across all participant producers.
(B) A qualitative assessment of the successes and challenges achieving source reduction goals, delineated by plastic covered material category, which ranks the relative frequency of use of each source reduction strategy.

(C) A quantitative assessment of source reduction achieved through reuse and refill strategies. The assessment shall assess the percentage of reduction in new material produced, detailing the reduction in the number and weight of plastic components through shifting to reusable or refillable packaging or food service ware and elimination of plastic components.
(D) Source reduction percentage by weight achieved through an alternative compliance formula pursuant to subclause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of section 42057 of the Public Resources Code and approved by the Department as part of the PRO's plan.

CAA Response

As outlined above in CAA's comments on Section 18980.6.5. Annual Reports, under the current draft regulations, the timeline for collecting and reporting source reduction data would be extremely difficult to meet. The data required for the reporting outlined in section 18980.9.1(2) will be reported to CAA by producers on May 31 of each year. The draft regulations currently require CAA to incorporate this data into the first phase of the annual report by July 1.

CAA recommends moving this source reduction data reporting requirement to the second phase of the annual report, due Oct. 1 of each year, allowing for significantly more time for data review.

CAA Recommendation

Revise Section 18980.9.1(d)(2) to indicate that source reduction reporting shall be included in the second phase of the annual report, due Oct. 1. of each year, in line with CAA's proposed edits to section 18980.6.5(b-c):

(d) For the PRO, the annual report shall additionally include:
(1) In the second phase of the annual report, as described in subdivision (c) of section 18980.6.5, fee schedule amendments pursuant to subdivision (e) of section 42053 of the Public Resources Code as a result of adjustments, including calculations for malus fees or credits.
(2) In ~~its first~~ the second phase of the annual report, as described in subdivision (~~b~~c) of section 18980.6.5, the following information with respect to source reduction:
(A) Percentage of reduction across all participant producers.
(B) A qualitative assessment of the successes and challenges achieving source reduction goals, delineated by plastic covered material category, which ranks the relative frequency of use of each source reduction strategy.
(C) A quantitative assessment of source reduction achieved through reuse and refill strategies. The assessment shall assess the percentage of reduction in new material produced, detailing the reduction in the number and weight of plastic components through shifting to reusable or refillable packaging or food service ware and elimination of plastic components.

(D) Source reduction percentage by weight achieved through an alternative compliance formula pursuant to subclause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of section 42057 of the Public Resources Code and approved by the Department as part of the PRO's plan.

Response to O-96-17

CalRecycle rejects this comment. The current reporting structure was intentionally designed to ensure timely evaluation of progress toward the statutory source-reduction goals established including section 42057(a) of the PRC, as well as to align with the Department's annual compliance assessment cycle. Further, section 42052 of the PRC requires that the PRO provides information necessary for the department to determine compliance on an annual basis. For CalRecycle to sufficiently accomplish such statutory provisions, CalRecycle must receive source-reduction data early enough in the calendar year to have sufficient time to review, analyze, and make determinations according said data. Thus, the July 1 deadline provides the Department with approximately six months to review, validate, request any necessary clarifications, corrections, or additional information before year-end, consistent with the oversight framework in PRC § 42053(e) and the enforcement provisions in Article 13 of the proposed regulations. This July date is already a compromise between adequate time for the department to meet its statutory requirements, while balancing the needs of reporting entities. Shifting the source-reduction data to the October 1 deadline as the commenter requests would not provide adequate time for CalRecycle to evaluate the reported data as discussed above, and overall make it operationally infeasible for CalRecycle accomplish the statutory requirements.

Again, this proposed regulation establishes a balance by allowing adequate time for all reporting entities to gather the necessary information for the report, while also ensuring CalRecycle receives the information as expeditiously as possible to make any necessary updates to the source reduction baseline. Further, the July 1, 2026 date also aligns with the annual reporting dates including section 18980.6.5(a), which should make for more efficient reporting. As this regulation is necessary for implementation of the act and aligns with statutory requirements while striking a balance between both adequate time for the reporting entities and adequate time for the Department, no change is required as it would undermine the above. Please also see responses to comments B-27-2, I-63-15, O-48-5 and O-41-4.

Comment O-96-18

Article 10: Registration and Data Reporting Requirements

Section 18980.10.1. Data Reporting Submission and Section 18980.10.2. Data Report Contents

Section 18980.10.1(c)

Regulatory text

(c) Reports shall:
(1) Be due on July 1 of each year, except for the PRO's initial report, which shall be submitted with its producer responsibility plan when that plan is submitted pursuant to subdivision (a) or (b), as applicable, of section 18980.6.1.
(2) Be submitted electronically using the Department's online reporting system or in another manner established by the Department.
(3) Report data pertaining to the previous calendar year. The reporting entity shall use the covered material category list that was current as of January 1 of the previous calendar year for purposes of reporting.
Section 18980.10.2(a)
Regulatory text
(a) Reports submitted pursuant to section 18980.10.1 shall contain the following information for all covered material for which the reporting entity was the producer or, for a PRO, for which its participant producers were the producers:
(1) For the previous calendar year, for each covered material category:
(A) The total weight of material, sold, distributed, or imported in or into the state.
(B) The total number of plastic components sold, distributed, or imported in or into the state.
(C) The total weight of material disposed of.
(D) The total weight of material recycled.
CAA Response
As CAA commented above on Section 18980.6.5. Annual Reports, and Section 18980.9.1. Annual Reports, CAA is concerned about the extremely tight timeline of incorporating supply and source reduction data (which CAA receives on May 31) in annual reports due July 1.
CAA has similar concerns about the data reporting requirements outlined in Section 18980.10. As written, the regulations require CAA to submit data reports on July 1 annually that include information CAA will receive only on May 31, allowing for less than four weeks for a rigorous data review. This is not a feasible timeline.
In line with the two-phased annual reporting system, CAA proposes a two-phased data reporting system. The first data report would be due July 1, in which CAA would report on the data points covered in Section 18980.10.2(a)(1) (C-D). These data points – the total weight of material disposed of and the total weight of material recycled – will be available to CAA much closer to the beginning of each calendar year, allowing for ample time for data review before reporting to the Department on July 1.
Under this system, a second data report would be due Oct. 1 of each year, and this submission would cover the data points outlined in Section 18980.10.2(1)(A-B). These data points cover the weight-based supply data CAA receives from producers on May 31. Creating this second annual data report submission will allow for an additional three months for data review.
CAA Recommendation
Revise Section 18980.10.1(c) as follows:
(c) Reports shall:
(1) Be due ~~on July 1~~ in two phases of each year, as provided in this section.~~, except for the PRO's initial report, which shall be submitted with its producer responsibility plan~~

~~when that plan is submitted pursuant to subdivision (a) or (b), as applicable, of section 18980.6.1.~~
(2) The first phase shall be submitted no later than July 1 of each year, except for the PRO's initial report, which shall be submitted with its producer responsibility plan when that plan is submitted pursuant to subdivision (a) or (b), as applicable, of section 18980.6.1.
(3) The second phase shall be submitted no later than October 1 of each year.
(~~2~~4) Be submitted electronically using the Department's online reporting system or in another manner established by the Department.
(~~3~~5) Report data pertaining to the previous calendar year. The reporting entity shall use the covered material category list that was current as of January 1 of the previous calendar year for purposes of reporting.
Revise Section 18980.10.2. (a) as follows:
a) Reports submitted pursuant to section 18980.10.1 shall contain the following information for all covered material for which the reporting entity was the producer or, for a PRO, for which its participant producers were the producers:
(1) For reports submitted July 1 pursuant to subsection (2) of 18980.10.1, for the previous calendar year, for each covered material category:
(A) ~~The total weight of material, sold, distributed, or imported in or into the state.~~ The total weight of material disposed of.
(B) ~~The total number of plastic components sold, distributed, or imported in or into the state.~~ The total weight of material recycled.
~~(C) The total weight of material disposed of.~~
~~(D) The total weight of material recycled.~~
(2) For reports submitted October 1 pursuant to subsection (3) of 18980.10.1, for the previous calendar year, for each covered material category: (A) The total weight of material, sold, distributed, or imported in or into the state. (B) The total number of plastic components sold, distributed, or imported in or into the state.
(~~2~~3) Pursuant to paragraph (3) of subdivision (a) of section 42052 and paragraph (4) of subdivision (a) of section 42052 of the Public Resources Code, for covered material collected and recycled through a program other than curbside collection programs, for each covered material category, the first phase data report shall include:
(A) Identification of each alternative collection program.
(B) The total weight of covered material collected by each program.
(C) The total weight of covered material that is recycled by each program.

Response to O-96-18

CalRecycle rejects this comment. The current reporting structure was intentionally designed to ensure timely evaluation of progress toward the statutory established requirements including sections 42057 and 42052 of the PRC which requires CalRecycle to obtain the relevant data to determine whether the recycling rates are being met and ensure compliance and program performance, as well as to align with the Department's annual compliance assessment cycle. Further, to ensure compliance with statutory requirements and determine the recycling rate, the PRC requires that the PRO provides data and information necessary for the department to determine compliance on an

annual basis. Again, in order for CalRecycle to determine compliance with the act, it is paramount that the department obtain the requisite information as early as possible to analyze and determine whether recycling rates are being met and the Act is being complied with. This cannot be accomplished until they have received and can analyze said date as outlined in statute and further clarified in regulations.

Thus, the July 1 deadline provides the Department with approximately six months to review, validate, request any necessary clarifications, corrections, or additional information consistent with the oversite framework in the PRC and the enforcement provisions in Article 13 of the proposed regulations. This July date is already a compromise between adequate time for the department to meet its statutory requirements, while balancing the needs of reporting entities. Shifting the reporting to the October 1 deadline as the commenter requests would not provide adequate time for CalRecycle to evaluate the reported data as discussed above, and overall make it operationally infeasible for CalRecycle to determine the recycling rates and accomplish the statutory requirements. Please also see responses to comments O-96-17, B-27-2, I-63-15, O-48-5 and O-41-4, which further address the commenter's concerns, as well as addressing the source reduction and corresponding reporting.

Comment O-96-19

Article 13: Enforcement Oversight by the Department
and Administrative Civil Penalties
Section 18980.13. Compliance Evaluation and Determination
Section 18980.13(g)

Regulatory text

(g) For requirements of the Act or this chapter that apply generally to participants in a PRO plan, such as the requirement to ensure that covered material sold, offered for sale, imported, or distributed in the state achieves the requirements set forth in sections 42050 and subdivision (i) of 42057 of the Public Resources Code, the failure to meet such requirements is a violation by the PRO for each plan participant that is a producer of the covered material at issue, except those to which the Department has issued an individual notice of violation for such failure. For example, if any participating producers continue offering for sale products that use covered material in a particular covered material category that does not meet the recycling rate requirements of subdivision (c) of section 42050 or subdivision (i) of section 42057 of the Public Resources Code, those producers of covered material in that category have violated their obligation under that section, and either the PRO or the individual participating producers may be penalized pursuant to section 42080 of the Public Resources Code for each such violation. Notwithstanding the foregoing, penalties shall not be imposed on the PRO for violations of subdivision (i) of section 42057 of the Public Resources Code that occur before approval of the PRO's plan.

CAA Response

CalRecycle has interpreted that the plastic recycling targets in PRC 42050(c) are applicable to each plastic CMC on an individual basis rather than as an aggregate target for all plastic covered material collectively.

Given the current disparate recycling rates between the various plastic CMC categories characterized as “plastic” in the CMC List (68 of 95 total CMCs), it is not reasonable that each CMC will be able to meet the recycling targets as required in the 2028, 2030 and 2032 time frame. EPR programs for packaging commonly differentiate recycling rates by broad material types, such as plastics, glass, metal, paper, rather than individual formats or resin types. With respect to plastics, the highest level of disaggregation that we have seen implemented to date is between flexible and rigid plastic formats, with flexible plastic targets always being lower than rigid plastic packaging targets.

CAA Recommendation

The explicit requirement for each plastic CMC to meet the recycling rate targets in 42050(c) as currently outlined in section 18980.13(g) of the draft regulations should be removed and replaced with either a target that all plastic single-use covered material must meet on aggregate or differentiated targets for rigid plastic versus flexible covered material.

Response to O-96-19

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act and no change is necessary to the implementation or enforcement of the Act. PRC section 42050(c) requires producers to ensure that all plastic covered material achieves the applicable recycling rates by the dates specified in that provision. PRC section 42062(c) provides that each covered material category will be assessed for compliance with PRC section 42050(c). Section 18980.13(g) of the proposed regulations clarifies how violations and penalties may be allocated between participants in a PRO plan and the PRO where a covered material category fails to comply with the rates required by PRC section 42050(c). Section 18980.13(g) of the proposed regulations is therefore consistent with the compliance requirements of PRC sections 42050(c) and 42062(c), and no change is necessary. The recommended change would be inconsistent with the requirement of PRC section 42062(c) and would create additional confusion and uncertainty.

Comment O-96-20

Section 18980.13.3. Notices

Section 18980.13.3(a)(2)

Regulatory text

a) For persons that have filed a primary business address with the Department pursuant to subdivision (c) of section 42051 of the Public Resources Code, notices of violation, notices of disciplinary action, and all accompanying documents shall be delivered by one or more of the following means:
...
(2) Email to the address on file with the Department pursuant to section 18980.10;

CAA Response

CAA recommends that "with written consent or written acknowledgment of receipt" be added to 18980.13.3(a)(2), given the possibility of emails not making it to the recipient they are destined to because of spam filters and other security safeguards, even if the email is sent to the email address on file with the Department.

CAA Recommendation

Revise section 18980.13.3 (a)(2) to read:
(2) Email to the address on file with the Department pursuant to section 18980.10 with written consent or written acknowledgment of receipt.

Response to O-96-20

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42060, 42080, and 42081, and the recommended change is not necessary to the implementation or enforcement of the Act. PRC section 42081(a) authorizes CalRecycle to issue a notice of violation to any entity not in compliance with the Act or regulations. Section 18980.10(a)(1)(H) of the proposed regulations requires a producer to file its business email address with CalRecycle, and section 18980.10(a)(3) establishes an ongoing obligation for such producer to ensure that the email address on file with CalRecycle is current and accurate. Therefore, the provision in section 18980.13.3(a)(2) of the proposed regulations already provides sufficient notice and safeguards to ensure that producers that are complying with their obligations under section 18980.10 of the proposed regulations can expect to receive notices of violation by the means described in section 18980.13.3(a)(2). Additionally, section 18980.13.3(a) provides additional safeguards by providing that CalRecycle may deliver such notices by one or more of the means described in sections 18980.13.3(a)(1)-(3). Therefore, where there is any question as to whether a producer will receive a notice delivered under section 18980.13.3(a)(2), CalRecycle can attempt additional delivery through the means described in sections 18980.13.3(a)(1) or (a)(3). No further change to the proposed regulations is necessary to ensure producers have adequate opportunity to receive a notice of violation.

O-97: Agricultural Council of California (Coalition) (Emily Rooney)

Comment O-97-1

On behalf of the undersigned organizations, we submit these comments regarding CalReycle's recent draft regulatory text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Collectively, we represent a broad coalition of food and agricultural associations, whose members may be subject to this regulation. We thank CalRecycle for their continued work to address concerns regarding affordability and costs associated with compliance with SB 54, however, we continue to remain concerned about overall implementation of the regulation. We look forward to working with you throughout this process.

Response to O-97-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-97-2

Section 18980.1(a)(17)(B). Definition of "Product that Uses Covered Materials"

We support CalRecycle's recent addition in this section highlighting that empty packaging materials are not considered single use plastic or covered materials for the purposes of this regulation. Empty packaging may or may not enter the commerce stream in the state of California and therefore should not be considered under compliance until it is purchased, filled and sold, by the producer for the user or consumer, into the supply chain in California.

Response to O-97-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-97-3

Section 18980.1.1. Producer Identification

In Section (c), we propose the following language be added for clarity (suggested new language in italics):

"(c) For covered material other than food service ware *and those identified in section 42041(e)(2) and (w)(4) of the Public Resources Code,* the producer shall be determined in accordance with this subdivision."

Response to O-97-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-63-3, which is substantively the same as this comment.

Comment O-97-4

ARTICLE 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials

The coalition remains supportive of the categorical exclusions for food and agriculture products that are under certain state and federal guidance or regulations. Issues such as protecting human and environmental health through food safety practices, and the prevention of the spread of pests and diseases are paramount when providing food and agricultural products (and their packaging) for consumers.

In Section 18980.2(2)(A), we propose the following language be added for clarity and specificity (suggested new language in italics):

Any entity that has determined that packaging is not covered material pursuant to paragraph (2) of subdivision (a) shall notify the Department and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination. The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal *and/or state* regulations, rules, or guidelines, *applicable to food and agriculture* and explain why no reasonably possible alternative packaging or packaging component is available. The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, the specification for the packaging and the associated product(s), and the status of any review by the Department of such determination.

At this time, there are not economically viable alternatives available to plastic packaging for many food and agricultural products throughout the supply chain and pursuing a change in the packaging will result in an increase in food prices and food waste. Some commodities are cooked or pasteurized within the package to properly sterilize the food and reduce the chances of contamination and spread of food borne illnesses. This method keeps the product and inside of the package completely pristine and shelf-stable until the package is opened.

Pursuing a change in packaging is a multi-step process that involves identification of materials and testing of the prototype for biological and structural stability. For shelf-stable foods, the testing spans twelve months at minimum. The food used for the testing process must be discarded. It is routine protocol that products that are in the experimental process for packaging testing and validation cannot be sold for human or animal consumption therefore resulting in excessive food waste.

Packaging changes could also require new machinery upgrades and/or entirely new equipment, since packaging lines are specifically designed by material type and package size. If new machinery must be purchased, a single food processing machine can cost $30 million to $100 million. In many cases, these costs are unsustainable for agricultural businesses and will lead to business closure or relocation out of the state. In rare cases, where an agricultural business can sustain this cost increase it will be

passed through the supply chain to the consumer. None of this includes the actual costs into research and development for new packaging or the costs for implementing the regulation.

In an effort to transition to other packaging alternatives, millions of dollars will be spent throughout the food supply chain, increasing food prices, and generating excessive food waste. For these reasons and many others, it is critical that CalRecycle maintain a workable "Categorical Exclusion," that provides an option for potential producers that do not have a "reasonable" alternative to prevent negative impacts to the food and agricultural supply.

Response to O-97-4

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-63-4, which is substantively identical to this one.

Comment O-97-5

Section 18980.2(a)(2)(A). Categorical Exclusion Reporting and Disclosures

Our coalition is concerned about Section 18980.2.(a)(2)(A) and its requirement of CalRecycle to publish, on a publicly available electronic database, the entity name and product specifications, of producers seeking exclusions based on conflicting regulations. While CalRecycle is mandated to withhold from the public information that may be identified as a trade secret, this is not sufficient assurance that information about producer products will not be released to the public and potential competitors. It is highly likely these entities could become a target for litigation or public shaming. Entities should not be exposed to targeting by the public or competitors for determining a product falls within the categorical exclusion for any reason.

In Section 18980.2(a)(2)(A), we propose the following language be added for clarity (proposed additions in italics and deletions in bold strikethrough):

"(A) The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, *a general description of* ~~**the specification for**~~ the packaging and the associated product(s), and the status of any review by the Department of such determination

Response to O-97-5

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-63-5, which is substantively identical to this one.

Comment O-97-6

Section 18980.2.(a)(2)(B). Determination of Non-Qualification

The coalition supports CalRecycle's overall approach to enforcement including engaging state agencies such as the California Department of Food and Agriculture (CDFA) and California Department of Public Health (CDPH) throughout the process. However, it is likely that entities that are found out of compliance for

packaging or components may not be able to ensure compliance within 180 days. If there are further requirements to transition safely to alternative compliance options such as additional research or machinery replacement, this can take much longer than the allotted 180 days. We urge CalRecycle to consider alternative compliance pathways for businesses working in a good faith effort to transition out of plastic packaging.

Response to O-97-6

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-63-6, which is substantively identical to this one.

Comment O-97-7

Sections 18980.2.2. Exclusion for Certain Types of Packaging

For the purposes of this section, CalRecycle determines that packaging used for the storage of certain products over five years is not considered covered materials. We recommend changing this threshold to one year for consistency with reporting to the Producer Responsibility Organization (PRO). This one change could create more consistency and efficiency within the reporting and compliance process.

Regarding public disclosures of de minimis, we hold the same concerns as the previous section requiring disclosures in Section 18980.2.(a)(2)(A) Categorical Exclusion Reporting and Disclosures. The coalition is concerned that public disclosures will expose the business community to legal actions and other nuisance issues.

Response to O-97-7

CalRecycle rejects this comment for the reasons provided in response to comment I-63-7.

Comment O-97-8

Section 18980.2.4. Exemptions for Certain Covered Materials

This coalition appreciates the Department's recognition of the need for exemptions of certain covered materials. However, we remain concerned about the language contained in the updated draft regulatory text suggesting exemptions last for only two years. The draft language and rulemaking processes have not substantiated any reason for this deadline which suggests a lack of specific reasoning for the two-year period. In most cases, two years will not allow sufficient time to develop alternative packaging, given the length of time to identify and test new packaging materials and subsequently obtain and install new packaging equipment. No covered material category is the same and may require reconsideration at different intervals. Thus, we strongly recommend exemption timelines be considered on a case-by-case basis that evaluates the compliance challenges with products in the exempted covered material category.

Additionally, the coalition believes that if certain packaging types are exempt, they should not be required to pay fees. By determining that a certain package is exempt, the PRO is concluding that it is necessary in some capacity and therefore it should not be subject to any of the regulatory costs associated with this process.

Response to O-97-8

CalRecycle rejects this comment for the reasons provided in response to comment I-63-8, which is substantively identical to this one.

Comment O-97-9

Section 18980.2.4. (4)(f)(2)(D): Alternative Phase-in Plans

The coalition supports allowing CalRecycle to approve alternative phase-in plans for businesses that require additional time to transition to compliance. This allows for greater flexibility for the regulated entity and CalRecycle to come to mutually agreeable, workable solutions in a timeframe that works for all parties involved.

Response to O-97-9

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-97-10

Section 18980.2.5. Covered Material Category List Updates

Additional clarity is still needed with regards to the timeline in which the Department can receive and review new information for updates to the Covered Material Category (CMC) List as outlined in the revisions in Section 18980.2.5 (a) and (b).

Specifically, Section 18980.2.5(a) dictates conflicting timelines and procedures for the department to follow in updating the CMC List. Furthermore, this section does not recognize the need for regular updates throughout the calendar year to address the needs of businesses in making purchasing decisions. We urge CalRecycle to update the CMC List on a quarterly basis to accommodate updated recycling data and purchasing decisions to ensure the proper management of covered materials at the start and end of their useful life.

To provide more clarity for the Department and producers we suggest the following streamlined updates to Section 1890.2.5(a) (proposed additions in italics and deletions in bold strikethrough):

“18980.2.5 “(a) The Department shall review and, if necessary, update the CMC list *quarterly to make relevant changes* ~~**within the applicable timeframe specified by**~~ *in accordance with* subdivisions (e) or (f) of sections 42061 ~~**or subdivision (a) of sections 42092**~~ of the Public Resources Code.”

The current rate of CMC List updates has already fallen short of providing the needed clarification for producers, end-markets, and municipal sorting centers.

These recommended changes to the draft regulatory text recognize the need for more consistent updates to the CMC List. As covered materials change as a result of the Act,

annual updates will fall short of what producers, suppliers, and end-use markets need to make management and planning decisions to remain compliant and achieve the highest rate of recyclability.

Response to O-97-10

CalRecycle rejects the comment. Subdivisions (e) and (f) of sections 42061 of the PRC and subdivision (a) of sections 42082 of the PRC have their own subject matter and a requirement for an update related to that subject matter. Ignoring the requirements of sections 42082 of the PRC is inappropriate. The process set forth by regulation to review and, if necessary, update the list is completely consonant with the requirement to update the list "at least" within or "no less than" particular timeframes and no change is required. CalRecycle also rejects the suggestion that the list be reviewed and updated quarterly. A commitment to quarterly review would significantly truncate the time needed to obtain longitudinal information and to analyze that information. The regulations do not restrict CalRecycle from revising the CMC list more frequently than the statutory minimum when appropriate for the circumstances, and thus no change is required.

Comment O-97-11

Section 18980.2.6.(a). Covered Material Category List Recommendations

We urge CalRecycle to combine aseptic cartons (Category ID PF15P) and gable-top cartons (Category ID PF5P) into a single CMC.

Gable-top and aseptic cartons are widely recognized and managed within the recycling industry under a single material category (including in the EPR systems in Oregon and Colorado and on the draft list in Maine). These cartons are baled, marketed, and sold together at Material Recovery Facilities (MRFs) in California and across the country. The industry does not differentiate between gable-top and aseptic cartons when preparing bales for end markets. In fact, Recycled Materials Association's (formerly ISRI) specifications for the Grade 52 bale, keeps gable top and aseptic cartons together. The U.S. EPA, in its waste characterization studies, also keeps aseptic and gable-top cartons together in the same category. This practice reflects the reality of the recycling industry, where both types of cartons are processed and marketed together.

CalRecycle's SB 343 MCS Report issued in April 2025 found that the difference in acceptance in recycling programs between the two types of cartons is negligible and programs that stated in the past that they manage them differently in all likelihood no longer do (i.e., any implication that they are collected, sorted, or marketed separately from each other is based on outdated information). Additionally, the MCS Report found that large volume transfer and processing facilities (LVTPFs) sort both types of cartons at the same percentage for recycling and into the same output stream.

Maintaining this unnecessary distinction between the two types of cartons increases the cost to California consumers, the PRO, and CalRecycle by requiring additional

composition study sorting, additional data collection, calculation of two instead of one recycling rates, and separate cost allocation to each carton type.

We urge CalRecycle to align with industry wide recycling practices and group aseptic and gable-top cartons together into a single Covered Material Category.

Response to O-97-11

CalRecycle rejects this comment for the reasons provided in response to comment I-63-11.

Comment O-97-12

ARTICLE 3: Evaluations of Covered Material and Covered Material Categories Section 18980.3.4. Independent Third-Party Validation of Postconsumer Recycled Content
Shifting packaging away from plastic will require substantial effort and resources. Requirements of the act should be inclusive of all alternatives to plastics. Agricultural waste is a well-established waste stream with multiple alternative uses for its byproducts. Many are used in packaging or container components already. To accommodate for the use of agricultural byproducts in alternative packaging we recommend the following language be included in the Act.

In Section 18980.3.4(a)., we propose the following language be added (proposed additions in italics):
"(a) A PRO shall not apply the source reduction credit based on incorporation of postconsumer recycled content *or substitution of virgin petroleum-based plastic with plant agricultural waste,* as described in section 42057(a)(2)(B)(i) of the Public Resources Code, unless the alternative compliance formula described for doing so has been proposed and approved as part of a PRO's plan in accordance with this section."

Response to O-97-12

CalRecycle rejects this comment for the reasons stated in response to comment I-63-12.

Comment O-97-13

ARTICLE 5: Requirements for Producers
Section 18980.5. Producer Compliance
We continue to urge flexibility for producers in registering with the PRO for the first time, then what is required in subsection (a) and (d) of Section 1890.5. This regulation is extremely complex and may be unclear for certain entities that may or may not be producers as required by the Act. Requiring producers to register with a PRO 30 days after the publishing of the Act may not leave enough time for an entity to fully understand how the requirements apply to their operation. This would result in a burdensome submission of data to the PRO and Department that would be unnecessary. This is especially concerning as it requires sensitive data be submitted by private companies to the PRO which is operated by a non-governmental agency.

The Department should provide additional resources and technical assistance for California businesses to determine whether they must comply with the Act. Additionally, the PRO should be granted more flexibility to onboard new producers at a cadence workable for both the PRO and potential producer to ensure accuracy in submitted data.

Due to the uniqueness of this regulation, we recommend CalRecycle and the PRO allow for a good faith phase-in plan for the submission of 2023 data upon initial registration to the PRO. Requiring complete data for 2023 could be problematic as the types of data may or may not have existed during this timeframe. Allowing producers to provide available data with a gradual phase-in process over subsequent years will incentivize more participation into the registration process and would be a more realistic, workable solution for producers.

Response to O-97-13

CalRecycle rejects this comment for the reasons stated in I-62-4, I-62-8, and B-1-1, as well as to the extent the latter portion of the commenter's submission concerns proposed changes or objections already addressed in response to other portions of the submission, and further does not request any specific changes to these referenced regulatory sections, no further response is necessary here.

Comment O-97-14

Section 18980.5.2. Exemptions for Small Producers

This coalition would like to raise concerns regarding the exemptions for small producers outlined in the Act. Producers with gross sales within California under $1 million in the most recent calendar year may apply for an exemption. The application is subject to approval and “applicants” must register as producers before they are considered exempt. These fees and accounting obligations will surely add to the costs of our products to consumers. Entities exempted under the program should not be required to register as a producer, pay fees, or be subject to enforcement penalties. They are exempt. These entities could be allowed to simply self-certify and then be exempted entirely from the program.

Response to O-97-14

CalRecycle rejects this comment for the reasons stated in I-64-14 and I-63-14.

Comment O-97-15

ARTICLE 9: Source Reduction Baseline Report and Annual Reports
Section 18980.9. Source Reduction Baseline Report

Given the substantial delay in an approved final regulation, which subsequently delays the development of a plan from the PRO, our coalition is recommending changes to Article 9 Sections 18980.9. to accommodate for the delays.

Additionally, the current source reduction baseline report language may create confusion, as it could be interpreted to require individual producers to submit reports to the department even when they are members of a PRO. We recommend clarifying the draft regulation to be consistent with the statute (PRC 420579 (c)).

To provide more stability and accurate data for the Department and PRO we suggest the following updates to Section 18980.9(a) and Section 18980.9(c) (proposed additions in italics and deletions in bold strikethrough):

“18980.9 “(a) On or before July 1, ~~**2026**~~ 2027, all reporting entities shall submit a source reduction baseline report to the Department. The source reduction baseline report shall be submitted electronically, and at minimum, include the total amount of plastic covered material, by weight and number of plastic components, for which ~~**they were**~~ *the reporting entity was the producer or, for a PRO, for which its participant producers* were the producers in the 2023 calendar year. The weight of plastic covered material shall be measured in accordance with paragraph (15) of subdivision (a) of section 18980.1.”

“(c) The Department shall use the information reported pursuant to this section to update the source reduction baseline pursuant to subdivision (b) of section 42057 of the Public Resources Code by November 1, ~~**2026**~~ 2027.

Response to O-97-15

CalRecycle rejects this comment for the reasons stated in I-63-15 (which this comment is a duplicate of).

Comment O-97-16

ARTICLE 10: Registration and Data Reporting Requirements Section 18980.10.2. Data Report Contents

We recognize that CalRecycle must establish a baseline for the 25% reduction using 2023 as the reference year, which necessitates requiring producers to submit their 2023 supply data.

Section 18980.10.2 details the data that producers must report, including the total weight of material sold, distributed, or imported in or into the state; the total number of plastic components sold, distributed, or imported in or into the state; the total weight of material disposed of; and the total weight of material recycled.

This proposed regulation requires a level of detail that may exceed the comprehensive record-keeping practices traditionally maintained by many producers, whose existing systems were not designed to track data for this regulatory purpose and will require significant refinement. While producers are committed to meeting these requirements, we respectfully request that the regulation include "good faith" language acknowledging the challenges of this initial reporting period. Specifically, producers are being asked to retrospectively compile data spanning three years, which will often necessitate

estimates derived through various sources, rather than data tracked through systems specifically designed for this reporting purpose.

We recommend adding a Section 18980.10.2(e) and propose the following language be included (proposed additions in italics):

(e) All data reported pursuant to this chapter shall be reported to the best of the producer's ability. Reporting errors for years 2023, 2024, and 2025 will not be subject to penalties if errors were made using a reasonable basis and disclosed in good faith.

Response to O-97-16

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-63-16, which is substantively the same as this comment.

Comment O-97-17

Reporting Guidance:

Our coalition also wishes to raise concerns with the "Covered Material Categories Reporting Guidance" issued by CalRecycle on September 2, 2025, and CAA's related draft reporting instructions. We have identified several challenges that create unnecessary burdens and duplicate work compared to reporting structures already implemented in Oregon and Colorado.

First, CalRecycle's guidance instructs producers to treat adhesives or coatings containing polymers as plastic components. While CAA is proposing to rely on the de minimis exclusion [PRC Section 42041(s)(4)(A)] in statute for adhesives used in cardboard boxes and coatings on paperboard or metal cans, these exclusions will not be approved by CalRecycle until after the regulations are finalized. Collecting data now on the plastic content of adhesives and coatings is both labor-intensive and premature, since these materials are likely to be excluded. We request that CalRecycle and CAA allow postponement of this data collection until final decisions on de minimis exclusions are made to avoid collection of data that will not be needed for future reporting.

Second, we are concerned with the broad interpretation of "plastic component" to include items that will never be separately collected or recycled, such as adhesives or tape on cardboard boxes or tin/steel bimetal can lids. Tracking such components separately is impractical, does not contribute to measurable recycling outcomes, and represents wasted effort. The guidance requires detachable components to be reported separately, even if made of the same material and recycled through the same stream. For example, reporting can lids separately from can bodies diverges from reporting practices in Oregon and Colorado; these states instructed producers to report the entire packaging material as one item weight. While separate reporting may make sense when detachable components are made of different materials, identical components that are recycled together should be reported in aggregate.

For these reasons, we strongly encourage CalRecycle to revise its reporting guidance to avoid duplicative data collection and to harmonize requirements with other state programs. Doing so will ease compliance and reduce unnecessary costs.

Response to O-97-17

CalRecycle rejects this comment because it does not concern the proposed regulations themselves. It concerns a document that CalRecycle published separately from these proposed regulations. That document is related to the covered material categories list, which is another publication that is not part of these regulations.

Comment O-97-18

Plastic Pollution Mitigation Fund:

Lastly, our coalition underscores that strong public–private partnerships will be essential to meeting the demands of compliance under SB 54. We encourage the Department, in collaboration with other state agencies, to allocate resources for research and development of practical packaging alternatives that also meet federal and state requirements for preventing the spread of pests and disease. Investment from the Plastic Pollution Mitigation Fund, as established in statute, can play a critical role in accelerating the transition away from plastic packaging while safeguarding public health and protecting California's food and agricultural systems. Given the scope of change required, the statutory timelines cannot realistically be achieved without robust collaboration between the public and private sectors. Strategic use of the Plastic Pollution Mitigation Fund will help producers comply with the Act while advancing its environmental goals and more rapidly reducing plastic pollution in California's communities, beaches, and waterways.

Thank you for your consideration of these comments. We look forward to working with the Department and the PRO throughout the duration of this process.

Response to O-97-18

CalRecycle rejects this comment. See the response to comment I-63-18.

O-98: Ag Container Recycling Council (Mark Hudson)

Comment O-98-1

EXECUTIVE SUMMARY

The Ag Container Recycling Council (ACRC) submits these comments on the proposed SB 54 permanent regulations to request that CalRecycle adopt a regulatory pathway recognizing ACRC's established container recycling system. ACRC's preferences, in descending order, are:

1. A class-wide "Agricultural Container Recognition" under § 18980.2.7 (or equivalent new § 18980.2.8), modeled on a program-level exemption and justified by the distinct

regulatory, logistical, and operational characteristics of agricultural pesticide and chemical containers.

2. Creation of a "Qualified Stewardship Program" pathway under new § 18980.2.8, tied to the authority in § 18980.2.7 and PRC § 42051(b)(2), allowing CalRecycle to recognize long-standing, high-performing stewardship systems that already achieve SB 54 outcomes independently of the PRO.

3. A coordinated Independent Producer Plan fallback pursuant to PRC § 42051(b)(2) and §§ 18980.5 et seq., wherein ACRC members file a single, shared compliance plan referencing ACRC's system (least preferred).

4. If program-level recognition through Options 1-3 proves infeasible, ACRC requests maximum fee reductions under § 18980.6.7(e)(1)(D) for covered material categories utilizing ACRC's alternative collection program. While this approach would acknowledge ACRC's superior performance, it perpetuates duplicative cost structures that threaten program viability and is therefore the least preferred compliance pathway.

We urge CalRecycle to adopt one of pathways 1-3 in the final regulations to avoid duplicative fees (PRO fees + ACRC dues) that threaten the viability of this uniquely situated, high-performing program. Our system has consistently delivered safe processing, rural collection coverage, and verified recycling rates ranging from 37.5% to 67.1%, with a recent three-year average of 53.7%. We stand ready to provide audit data, end-market verification, and reporting assurances.

In summary, this comment letter:
• Identifies relevant proposed regulatory sections (§ 18980.2.7 and proposed § 18980.2.8) and proposes specific edits
• Presents performance evidence showing compliance with or progress toward regulatory thresholds
• Offers regulatory text establishing clear recognition criteria for proven stewardship programs
• Frames the environmental, rural, and policy rationale
• Emphasizes ACRC's willingness to collaborate with CalRecycle and the PRO
We respectfully request that CalRecycle adopt recognition of ACRC's system in the final rule, rather than forcing duplicative compliance that risks program collapse.

Response to O-98-1

Comment rejected. Although this comment references section 18980.6.7(e)(1)(D), it does not offer any substantive proposal or objection. Rather, the commenter refers to other portions of their submission. To the extent those other portions propose changes or raise objections requiring responses, CalRecycle has provided such responses elsewhere.

Comment O-98-2

1. INTRODUCTION & STANDING

Who is the ACRC?
The Ag Container Recycling Council (ACRC) is a 501(c)(6) nonprofit association that promotes and funds programs in the United States for the collection and recycling of rigid HDPE plastic agricultural chemical containers (up to and including 55 gallons) from pesticide, animal health, specialty pest control, micronutrient, biological, fertilizer, adjuvant and surfactant products. ACRC operates in 47 states as the agricultural chemicals industry's not-for-profit stewardship program.

ACRC was founded in February 1992 by 11 manufacturers, formulators or packagers of such products and was an instrumental resource in the development of the ANSI/ASABE S596 Standard, specifying how to handle, clean and recycle pesticide containers. Today, ACRC has 39 Regular Members and 19 Affiliate Member companies, funded entirely by member dues.

Why CalRecycle Should Consider These Comments
ACRC has operated a specialized agricultural container stewardship program in California for over three decades, serving as the compliance mechanism for the California Department of Pesticide Regulation's (CDPR) pesticide container recycling requirements under Food and Agriculture Code §12994 et seq. since 2012.

As a stakeholder with 33 years of proven success in agricultural container recycling, established infrastructure serving California's 58 counties, and direct obligations to both member companies and agricultural end-users, ACRC has substantial interest in ensuring SB 54's implementing regulations preserve effective existing stewardship programs while advancing the Act's environmental objectives.

2. BACKGROUND: ACRC'S PROGRAM & PERFORMANCE

Program History and Operations
ACRC began collecting in California in 1993, the first year of nationwide collection. Since inception, ACRC has collected approximately 49.3 million pounds of agricultural chemical containers in California, translating to approximately 61.6 million empty rinsed containers. Of the 49.3 million pounds collected, only 2.6 million pounds currently sit in inventory, demonstrating that ACRC has successfully recycled 95% of the plastic collected. Year-to-date in 2025, ACRC contractors have successfully recycled 1.4 million pounds of plastic (already 81% of 2025 YTD collections). Since 1992, ACRC contractors have recycled over 257 million pounds of HDPE containers to responsible end markets nationwide, including over 46 million pounds in California.

Processing Protocols
The program operates under rigorous EPA standards established in the 2006 Container and Containment Rule (40 CFR Part 165), requiring 99.99% removal of each active ingredient through triple-rinsing and decontamination protocols. This specialized decontamination process is NOT compatible with standard materials recovery facilities

(MRFs) due to pesticide residue contamination risks, meeting EPA requirements that distinguish agricultural containers from general packaging waste streams.

While FIFRA-regulated pesticide containers are statutorily exempt from SB 54, ACRC's collection system handles these alongside non-FIFRA agricultural products (fertilizers, adjuvants, surfactants, micronutrients) as an operationally unified stream. Requiring segregation would impose impractical safety and logistical burdens. ACRC seeks recognition for the entire agricultural container material stream collected through its program.

Geographic and Rural Coverage
In California, ACRC maintains statewide collection and recycling contractor coverage across a network of collection sites including farms, agricultural retailers, professional chemical applicators (ground and aerial), golf courses, nurseries, and greenhouses. This infrastructure serves rural agricultural areas where municipal collection systems are absent, inadequate, or not designed for agricultural chemical containers.

Published Recovery Rates and Documented Performance
California-specific performance data demonstrates consistent program operation and continuous improvement:

2019-2024 Collection Performance:
• Annual collection ranged from 1.7 to 2.6 million pounds
• 2024 achieved 2.39 million pounds (60.7% collection rate)
• Three-year average collection rate: 58.1%
2019-2024 Recycling Performance:
• Recycling rates ranged from 37.5% to 67.1%
• Three-year rolling averages between 39.2% and 67.1%
• Most recent three-year average: 53.7%
• 2023 peak performance: 67.1%
Long-term Growth:
• From 500,000 pounds (1993) to 2.39 million pounds (2024)
• Nearly 5x growth over program lifetime

Responsible End Markets
All collected plastic is recycled into productive end uses including agricultural drainpipe, nursery pots, landscaping edging, and underground conduit. ACRC's Technical Committee vets all end markets as suitable end uses for program plastic. ACRC also audits each end user manufacturer and manufacturing site to confirm compliance with rigorous health, safety, and environmental program requirements, maintaining complete chain-of-custody documentation from collection through verified end markets as required under § 18980.4(a)(2)(A).

3. PROBLEM STATEMENT: DUPLICATE FEES & RISK TO PROGRAM CONTINUITY

Defining the Duplicate-Fee Issue

Despite ACRC's proven performance and established infrastructure, while § 18980.2.7 provides authority for class-wide exemptions, the regulations do not explicitly recognize qualified existing stewardship programs like ACRC that already achieve SB 54 outcomes through specialized collection infrastructure operating independently of municipal systems, forcing ACRC members to pay both ACRC membership dues AND Producer Responsibility Organization (PRO) fees—a duplicative cost structure that threatens program viability and environmental outcomes.

Existing Exemption Pathways Don't Address Program-Level Recognition
The draft regulations provide two primary applicable exemption mechanisms, neither of which adequately addresses ACRC's situation:

Section 18980.2.3 (Demonstrated Recycling Rates) exempts materials from covered material status under PRC §42041(e)(2)(H) if they achieve 65-70% recycling rates through alternative collection programs. While ACRC's performance approaches these thresholds (67.1% in 2023, 53.7% three-year average), this pathway requires material-specific applications for individual container types rather than program-level recognition, creating administratively burdensome fragmentation of what is operationally a unified collection system.

Section 18980.2.4 (Unique Compliance Challenges or Health/Safety Concerns) provides exemptions based on PRC §42060(a)(3) and §42060(a)(4), but explicitly states: "The exemption does not affect the status of the single-use packaging...as covered material and does not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees." This pathway allows continued sale of non-compliant materials but does not eliminate the duplicate fee problem.

Potential for Member Attrition
ACRC members are making time-sensitive 2026 decisions about membership and dues commitments now. Without clarity on compliance pathways that avoid duplicate fees, members cannot evaluate whether ACRC participation represents viable compliance or duplicative expense. Several members are already reconsidering membership or reducing dues payments, eroding program funding.

Impact to Agricultural Grower/Farmer Community
The administrative burden and reduced funding efficiency would ultimately harm California growers and agricultural chemical users who rely on ACRC's collection network. Rural collection sites, agricultural retailers, and on-farm collection services operate on thin margins. Reduced program funding would force service reductions in precisely the areas where municipal collection infrastructure does not exist and this unique and specialized program is depended upon by growers.

Real Environmental Consequences
If ACRC's program collapses due to duplicate fee burdens, agricultural containers will enter landfills or be burned on farms-a common practice without collection programs-

directly contradicting SB 54's environmental objectives under PRC §41780.01 and §42040. Fees paid to the PRO are unlikely to fund collection of agricultural chemical containers in rural areas, but rather to subsidize collection of materials from other industries in urban settings.

4. STATUTORY AND REGULATORY AUTHORITY FOR RECOGNITION / EXEMPTION

Link to SB 54 Statutory Provisions

• PRC §42040 establishes the Act's intent to increase recycling and reduce plastic pollution through various means, including source reduction, increased recycling and composting rates, and Extended Producer Responsibility (EPR).
• PRC §42041(e)(2)(H) provides for exemption from covered material status for materials achieving specified recycling rates through alternative collection programs.
• PRC §42051(b)(2) authorizes producers to comply individually or collectively outside PRO participation if they meet specified requirements, creating statutory foundation for Independent Producer pathways.
• PRC §42060(a)(3) and (a)(4) authorize the Department to grant exemptions based on unique compliance challenges or health and safety concerns.

Link to Proposed Regulation Sections

• § 18980.1(a)(2) defines "alternative collection" as programs collecting covered materials "regardless of whether the covered material is discarded or considered solid waste and regardless of the manner and location of collection," explicitly excluding curbside collection by local jurisdictions or their contractors. ACRC unambiguously qualifies under this definition.
• § 18980.2.3 implements PRC §42041(e)(2)(H), establishing criteria for exemption based on demonstrated recycling rates through alternative collection programs meeting specified performance thresholds.
• § 18980.2.4 implements PRC §42060(a)(3) and (a)(4), establishing exemption procedures for materials presenting unique compliance challenges or health/safety concerns.
• § 18980.2.7 authorizes class-wide exemptions where "the application's justification for the exemption necessarily applies to all products or covered material within the class." This provision creates regulatory authority for program-level recognition where distinct material characteristics justify unified treatment.
• § 18980.4 establishes responsible end market criteria, which ACRC's verified end markets satisfy through documented chain of custody, third-party audits, and recycling yield performance.
• §§ 18980.5-18980.5.2 establish Independent Producer pathways, creating an alternative compliance mechanism though one requiring greater administrative burden.
• § 18980.6.7(e)(1)(D) explicitly authorizes "alternative reduced base fee rates" for covered material categories utilizing alternative collection programs, recognizing that specialized collection infrastructure may warrant differential fee treatment based on measurable performance.

Response to O-98-2

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-98-3

5. PROPOSED REGULATORY PATHWAYS & TEXT SUGGESTIONS

5(a). Class-Wide Exemption Recognition via § 18980.2.7
PROPOSED REGULATORY TEXT (additions shown in bold red):

§ 18980.2.7. Scope of Exemptions
(a) Applications for exemptions pursuant to this article may request that the exemption be applicable to an entire class of products or covered materials having certain characteristics in common. The class must be clearly defined according to the combination of characteristics that justify the exemption, so that items to which the exemption would apply are readily distinguishable from those to which it would not apply. The Department shall deem the exemption to apply to such class if the application's justification for the exemption necessarily applies to all products or covered material within the class.

(a-1) Recognition of Qualified Stewardship Programs for Specialized Material Streams. The Department may recognize covered materials as a class exempt from Producer Responsibility Organization participation requirements under PRC §42051(b) where such materials are:

(A) Produced by members of an established stewardship program that has operated in California for at least three years with documented performance data;

(B) Collected through systematic alternative collection infrastructure as defined in §18980.1(a)(2), serving non-residential generators independently of local jurisdiction curbside programs;

(C) Subject to specialized processing requirements due to federal or state regulatory mandates, health and safety concerns, or technical characteristics that differ substantially from standard materials recovery facility operations; and

(D) Recycled through responsible end markets meeting the criteria specified in § 18980.4.
(a-2) Performance and Accountability Requirements.

(A) Annual Data Submission. The stewardship program shall submit annual data to the Department demonstrating:
(i) Collection and recycling rates calculated according to § 18980.3.2;

(ii) Performance compared to an established baseline;
(iii) Chain of custody documentation for material from collection through end markets; and
(iv) Verification that end markets continue to meet criteria under § 18980.4.

(B) Periodic Third-Party Verification. The stewardship program shall arrange and pay for independent third-party audits of its California operations at intervals and consistent with requirements specified by the Department, and provide audit results to the Department.

(C) Performance Standards. The Department shall establish performance standards for recognized stewardship programs considering:
(i) Recycling rate thresholds appropriate to the material stream and collection infrastructure;
(ii) Collection rate maintenance or improvement requirements;
(iii) Responsible end market verification; and
(iv) Compliance with applicable federal, state, and local regulations.

(D) Conditional Recognition and Performance Improvement. Where a stewardship program demonstrates operational capability but has not yet achieved all performance standards, the Department may grant conditional recognition with mutually agreed performance milestones and timelines. The Department may extend conditional recognition based on demonstrated good-faith efforts and circumstances beyond the stewardship program's reasonable control.

(E) Revocation. The Department shall revoke recognition if:
(i) Required data submissions or audits are not provided within timeframes specified by the Department;
(ii) Performance standards are not met without adequate justification;
(iii) End markets fail to satisfy criteria under § 18980.4;
(iv) The stewardship program or its members provide false or materially incomplete information; or
(v) Other material violations occur and are not cured within timeframes specified by the Department.

(F) Upon revocation, member producers shall have six months to join a PRO or apply for Independent Producer status under § 18980.5.1, during which time producers shall not be deemed in violation of PRC § 42051(b)(1).
(b) If the Department determines that an application asserts a justification that necessarily applies to a class of products or covered materials, the applicant shall be required to amend the application to cover such class as described in subdivision (a).
(c) An exemption for a class of products or covered materials may not necessarily cover all covered materials in a particular covered material category.
(d) When granting a class-wide exemption, the Department may supplement or modify the definition of the class set forth in the application to ensure that it clearly identifies the

items to which it applies and distinguishes them from the items to which it does not apply.
(e) A class-wide exemption shall apply to all products or covered materials within the class, regardless of whether the products or covered materials were in existence when the Department issued the exemption.
(f) The Department shall publish on its website all issued exemptions that apply to classes of products or covered materials**, including recognition of qualified stewardship programs under subdivision (a-1)**.
(g) The provisions of this article concerning expiration, renewal, and termination of exemptions apply to an exemption for a class of products or covered materials, except that an Independent Producer of the exempted covered material may request that the exemption be renewed by submitting a new application meeting the applicable requirements of this article, regardless of whether it had submitted the application on which the exemption was originally based. **Recognition granted under subdivision (a-1) shall remain effective provided the stewardship program continues to satisfy the requirements of subdivision (a-2) and any performance standards established by the Department.**

Response to O-98-3

CalRecycle rejects the proposed changes to 18980.2.7 because they have no basis in the statutory authorizations under which CalRecycle may grant exemptions. Rather than describing a process for approving class-wide exemptions based on, for example, Public Resources Code section 42060(a)(3) or (4), the proposed changes would provide for recognition of a stewardship organization and program that would operate in parallel with the statutorily mandated PRO's program. CalRecycle does not have the authority to authorize a wholesale alternative to PRO participation.

Comment O-98-4

5(b). Establish "Qualified Stewardship Program" Recognition Pathway Under New § 18980.2.8
PROPOSED NEW REGULATORY SECTION:

§ 18980.2.8. Recognition of Qualified Stewardship Programs
(a) Authority and Purpose. The Department may recognize existing stewardship programs that demonstrate long-term, high-performing collection and recycling of specialized covered materials through alternative collection infrastructure, pursuant to:

(1) The class-wide exemption authority in § 18980.2.7;

(2) The independent compliance authority in PRC § 42051(b)(2); and

(3) The exemption authority in PRC § 42060(a)(3) and (a)(4).

(b) Eligibility Requirements. A stewardship program may apply for recognition by demonstrating:

(1) At least three years of documented operation in California with verifiable performance data;

(2) Systematic alternative collection as defined in § 18980.1(a)(2), serving non-residential generators independently of local jurisdiction curbside programs;

(3) Recycling performance calculated according to § 18980.3.2 that demonstrates alignment with or reasonable pathway to achieve SB 54 objectives;

(4) Responsible end markets meeting criteria in § 18980.4, with documented chain of custody and verification protocols;

(5) Specialized processing requirements that differ substantially from standard materials recovery facility operations due to regulatory mandates, technical characteristics, or health and safety concerns;

(6) Industry funding through producer member fees or dues, with no reliance on municipal solid waste service fees or taxpayer funding; and

(7) Compliance with all applicable federal, state, and local regulations.

(c) Application and Review. Applications shall be submitted electronically to the Department and include:

(1) Program description, including governance, membership, funding, and operational history;

(2) Covered material specification using the covered material category list framework;

(3) Performance data for the most recent three years, including collection amounts, recycling rates, geographic distribution, and end market verification;

(4) Infrastructure description, including collection locations, processing protocols, and material flow documentation;

(5) Compliance documentation demonstrating satisfaction of eligibility requirements; and

(6) If applicable, a performance improvement plan establishing specific milestones and timelines.

(d) Conditional Recognition. The Department may grant conditional recognition where certain elements do not fully satisfy specified criteria but conditions identified by the Department, if met, would warrant full recognition. The Department may establish performance milestones, reporting requirements, and timelines appropriate to the stewardship program and material stream. Conditional recognition shall convert to full recognition upon satisfaction of conditions, or shall be revoked if conditions are not satisfied within timeframes established by the Department, unless extended based on demonstrated good-faith efforts and circumstances beyond the stewardship program's reasonable control.

(e) Effect of Recognition. Upon recognition:

(1) Covered materials subject to recognition shall be deemed compliant with PRC § 42050 and subdivision (i) of PRC § 42057, provided the stewardship program maintains compliance with this section;

(2) Producer members shall be deemed to satisfy obligations under PRC § 42051(b) with respect to covered materials subject to recognition, and shall not be required to participate in a PRO or pay PRO fees for such covered materials; and

(3) The stewardship program and its members remain subject to registration requirements under § 18980.10, annual reporting requirements, record maintenance requirements, and investigation and enforcement authority under PRC § 42080 and § 42081.

(f) Ongoing Compliance. Recognized stewardship programs shall:

(1) Submit annual reports to the Department containing collection and recycling data, recycling rate calculations, infrastructure updates, end market verification, membership changes, and performance improvement plan progress if applicable;

(2) Arrange and pay for independent third-party audits at intervals specified by the Department;

(3) Maintain performance consistent with standards established by the Department considering the material stream characteristics and collection infrastructure; and

(4) Coordinate with approved PROs and other Independent Producers as appropriate.

(g) Revocation. The Department shall revoke recognition if required reports or audits are not submitted, performance standards are not maintained without adequate justification, end markets fail to satisfy criteria under § 18980.4, false or

materially incomplete information is provided, or other material violations occur and are not cured within timeframes specified by the Department. Upon revocation, member producers shall have six months to join a PRO or apply for Independent Producer status under § 18980.5.1, during which time producers shall not be deemed in violation of PRC § 42051(b)(1).

Response to O-98-4

Comment rejected for reasons set forth in response to comment O-98-3.

Comment O-98-5

5(c). Coordinated Independent Producer Plan Fallback Pursuant to PRC § 42051(b)(2) and §§ 18980.5 et seq.

Should the program-level exemption mechanisms in Options 1 and 2 prove administratively infeasible, ACRC requests CalRecycle provide expedited guidance on whether ACRC could pursue Independent Producer status under § 18980.7.1 on behalf of member companies.

Conditional Approval Framework:

Section 18980.7.1(b) explicitly authorizes conditional approval where "certain elements of the plan do not meet certain requirements of the Act or this chapter, but if conditions identified by the Department are met, final approval will be warranted."

ACRC proposes conditional approval based on:
Current Performance Baseline: Three-year average recycling rate of 53.7% with demonstrated capability of 67.1% in 2023, proving program effectiveness and scalability potential.

Performance Improvement Commitment: Development of a mutually agreed-upon timeline with CalRecycle establishing achievable recycling rate milestones, accounting for infrastructure development, market conditions, and program expansion requirements to reach 65% three-year average within three years.

Progress Reporting: Per § 18980.7.1(c), submission of monthly status updates during conditional approval period documenting specific actions taken, performance metrics, challenges encountered, and trajectory toward established milestones.

Existing Infrastructure: Established collection network, responsible end markets, and data reporting systems requiring minimal modification for SB 54 compliance.

This pathway would allow ACRC members to avoid duplicate PRO fees during the improvement period, preserving program funding while ACRC implements infrastructure enhancements and operational modifications necessary to achieve performance targets. Under § 18980.7.1(d), conditional approval combined with performance-based

extensions would provide adequate time to demonstrate sustained improvement without program disruption.

ACRC commits to transparent collaboration with CalRecycle to establish realistic, data-driven performance benchmarks that serve environmental objectives while recognizing the operational realities of agricultural container collection.

Response to O-98-5

CalRecycle rejects this comment. Rather than commenting on the regulations themselves or raising an objection related to the rulemaking process, the commenter requests "expedited guidance" as to a particular course of action the commenter proposes for securing compliance with the Act on behalf of other entities. More specifically, the commenter asks CalRecycle to determine in advance that certain circumstances will merit conditional approval of an Independent Producer plan under section 18980.7.1(b). Such a request is not a request to change the proposed regulations, and even if it were, codifying conditional approval for certain entities with respect to their statutory obligations would be inappropriate. The proper use of regulations is to establish rules of general application or interpret and clarify statutory provisions, not to issue findings concerning particular parties' compliance. Moreover, the advance determination the commenter seeks would be speculative because, as made clear in 18980.7.1(b), it could only be relevant after an Independent Producer plan exists and has been determined not to satisfy certain requirements under the Act. The approval sought also appears to ignore straightforward statutory requirements, such as the requirement in Public Resources Code section 42051(b)(2)(A) which prescribes a 65 percent recycling rate "for three consecutive years prior to January 1, 2027." Section 42051(b)(2)(A) does not mandate an average rate, and that section explains that Independent Producer plans are producer-specific ("[A] producer may comply with this chapter individually without participating in a PRO's plan" if certain conditions are met).

Comment O-98-6

6. PERFORMANCE EVIDENCE & SAFEGUARDS

Data Showing Compliance with Thresholds

ACRC's California performance demonstrates substantial alignment with SB 54 objectives:

Recycling Rate Performance:

- Three-year average (2020-2022): 58.9%
- Three-year average (2021-2023): 67.1%
- Three-year average (2022-2024): 39.2%

While recent three-year averages have not consistently exceeded 65%, ACRC's 2023 performance demonstrates capability to achieve this threshold with appropriate

infrastructure investment and operational refinement. The program's 33-year operational history shows continuous adaptation to changing markets, regulatory requirements, and collection challenges.

Collection Rate Performance:
• 2024: 60.7%
• 2023: 52.1%
• 2022: 61.5%
• Three-year average (2022-2024): 58.1%

Long-term Growth Trajectory: From program inception in 1993 (500,000 pounds collected) to 2024 (2.39 million pounds), ACRC has demonstrated nearly 5x growth in California, reflecting program maturation, member growth, and infrastructure expansion.

Audit and Verification Protocols
ACRC maintains comprehensive documentation requirements allowing for audit and verification.

Third-Party Audits: ACRC conducts compliance audits of responsible end markets which are required every five years to maintain approval, consistent with requirements in § 18980.4.2, performed by independent third parties with full access to chain-of-custody records, processing data, and facility operations.

Responsible End Market Certification: All ACRC end markets undergo rigorous vetting by ACRC's Technical Committee and on-site facility audits confirming:
• Compliance with permitting, licensing, and regulatory requirements (§ 18980.4(a)(1))
• Transparency through complete chain-of-custody documentation (§ 18980.4(a)(2))
• Achievement of recycling yield thresholds (§ 18980.4(a)(4))
• Proper handling of incompatible materials (§ 18980.4(a)(3))

Data Reporting Infrastructure: Since 2012, ACRC has provided annual collection and recycling data to CDPR, demonstrating long-term accountability and transparency. This existing reporting framework and history demonstrates ACRC’s ability to satisfy SB 54 reporting requirements.

Revocation Triggers
ACRC proposes clear, objective performance triggers that would justify revocation of any recognition granted:

Reporting Failures: Non-submission of required annual reports or third-party audits within 30 days of due date.

Performance Improvement Targets: ACRC proposes the following performance improvement timeline:
• Year 1 (2026): Maintain 50% three-year average; expand collection sites by 10%

• Year 2 (2027): Achieve 55% three-year average; implement enhanced reporting systems
• Year 3 (2028): Achieve 60% three-year average; complete independent audit
• Year 4 (2029): Sustain 65% three-year average

Performance Declines: Three-year average recycling rate falling below 45% (or agreed conditional threshold) for two consecutive measurement periods, or collection rate declining by more than 25% compared to 2023 baseline for two consecutive years absent force majeure.

End Market Failures: End markets failing to satisfy responsible end market criteria under § 18980.4, or systematic violations of handling protocols.

Information Integrity: Provision of false or materially incomplete information to CalRecycle.

These triggers balance the need for program accountability with recognition that agricultural container collection and subsequent recycling of such container plastic sales faces unique market volatility.

7. COMPARATIVE PRECEDENT: OREGON ACRC MODEL

What Oregon's DEQ Allowed

Oregon's recently adopted regulations (OAR 340-090-0840(2)(d)(D)) provide a successful model for recognizing established stewardship programs within EPR frameworks. Oregon specifically exempts:

"Rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants, surfactants, and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC."

This exemption is conditioned upon:
• Annual data submission to DEQ demonstrating maintenance of consistent collection rates and convenience standards compared to a 2023 baseline
• Verification that ACRC is recycling containers at responsible end markets
• Third-party audit of the Oregon collection program once every five years beginning no later than 2027

Distinctions and Lessons for California Adaptation

Similarities to California Circumstances:
• Specialized agricultural container material stream requiring decontamination
• Established collection infrastructure serving rural agricultural communities
• Long-term performance data demonstrating program effectiveness
• Need to avoid duplicative fees threatening program viability

California-Specific Considerations:
• California's agricultural sector is significantly larger and more diverse than Oregon's, with greater geographic dispersion across 58 counties
• California's existing CDPR reporting requirements since 2012 provide longer-term performance documentation
• California's SB 54 includes more detailed responsible end market criteria (§ 18980.4) and recycling rate calculation methodologies (§ 18980.3.2)
• California's regulatory framework includes specific provisions for class-wide exemptions (§ 18980.2.7) that Oregon's rules do not explicitly contain

Key Lessons: Oregon's approach demonstrates that EPR frameworks can successfully accommodate proven stewardship programs without compromising environmental objectives or regulatory oversight. The conditional exemption model-recognition tied to ongoing performance verification and periodic audits-provides accountability while preserving effective existing infrastructure.

California can adopt a similar approach while enhancing it through:
• More specific performance thresholds aligned with SB 54's recycling rate requirements
• Explicit incorporation into the class-wide exemption framework under § 18980.2.7
• Clear revocation triggers and phase-in provisions for performance improvement

8. POLICY & ENVIRONMENTAL RATIONALE

Alignment with SB 54's Goals

PRC §42040 establishes the Act's intent to:
• Achieve a 25% reduction in single-use plastic packaging by source reduction
• Ensure that remaining covered material achieves 65% recycling or composting rate by January 1, 2032
• Shift costs of end-of-life management from ratepayers and local governments to producers

ACRC's program directly advances these objectives:

Source Reduction: ACRC's triple-rinse and inspection protocols reduce material contamination, improving recyclability and reducing disposal. Member companies' participation in voluntary stewardship demonstrates producer responsibility predating SB 54's mandates.

Recycling Rate Achievement: ACRC has demonstrated capability to achieve 67.1% recycling rates (2023), with three-year averages ranging from 39.2% to 67.1%. With regulatory certainty and sustained funding, ACRC improvements can consistently achieve targets aligned with or exceeding SB 54's 65% requirement.

Cost Shifting: ACRC is funded almost exclusively through producer member dues-eliminating burden on municipal recycling systems and California taxpayers. Agricultural

containers are collected through specialized infrastructure, not municipal curbside programs, ensuring no ratepayer subsidization. Small fees are allowed to be charged by contractors only to smaller collection sites to encourage consolidated collection at retail and to drive long term efficiency of the program.

Rural Access and Environmental Impact

California's agricultural regions are predominantly rural, with limited or no municipal curbside recycling infrastructure. ACRC's specialized collection network provides the ONLY statewide systematic recycling access for agricultural containers.

Forcing ACRC into PRO structures designed for urban/suburban packaging waste would likely result in:
• Service reductions in rural areas where collection costs per pound are highest
• Reallocation of resources to urban collection of general packaging materials
• Loss of specialized collection sites at agricultural retailers, farms, and application businesses
• Increased likelihood of agricultural containers being landfilled or illegally burned

This outcome would directly impact rural agricultural communities and the environment.

Cost-Efficiency and Infrastructure Preservation

Operational Efficiency: ACRC's specialized infrastructure is optimized for agricultural container collection:
• Collection sites co-located with agricultural retail and service providers
• Collection timing aligned with agricultural seasons and chemical application cycles
• Processing facilities and processes designed to insure agricultural container decontamination
• End markets developed to accept agricultural-origin HDPE

Forcing this material stream into general PRO infrastructure would create inefficiencies:
• PRO collection systems are designed for residential/commercial packaging, not agricultural containers requiring specialized handling
• Duplicate administrative overhead for contract management, reporting, and fee collection
• Mismatch between urban-focused PRO infrastructure and rural agricultural generation sites

Financial Efficiency: ACRC collects and recycles agricultural containers through a specialized contractor network with very tight margins, representing efficient use of member dues. A subcontracting model routing member fees through CAA would:
• Add administrative overhead for CAA management and contract administration
• Create circular funding flows (members > CAA > ACRC) reducing dollars available for actual collection

• Impose additional compliance costs on both organizations for contract management and reporting

Direct recognition of ACRC maximizes environmental and collection value per dollar spent.

Continuity of Proven Infrastructure
ACRC has operated successfully in California for 33 years, collecting 49.3 million pounds and recycling 46.7 million pounds (95% of collections). This infrastructure represents:
• Established relationships with hundreds of agricultural retailers, applicators, and farms
• Trained collection site operators familiar with handling and rinsing protocols
• Vetted transportation and processing contractors
• Verified responsible end markets with long-term supply relationships

Regulatory uncertainty threatening ACRC's viability risks dismantling infrastructure that took decades to build and would be difficult or impossible to reconstruct. Even temporary disruption would result in agricultural containers entering landfills or being burned during the reconstruction period.

SB 54's intent under PRC §42040 is to improve environmental outcomes, not to disrupt effective existing programs. Where specialized, high-performing collection infrastructure already exists and operates independently of municipal systems, policy should recognize and preserve that infrastructure rather than force artificial integration that adds costs without adding environmental value.

Response to O-98-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-98-7

9. SPECIFIC COMMENTED SECTIONS & SUGGESTED EDITS

Note on Fee Reduction (§ 18980.6.7(e)(1)(D)): As stated in the Executive Summary, ACRC's primary preference is program-level recognition through Options 1-3. The fee reduction analysis below represents a regulatory alternative if recognition pathways prove administratively infeasible, though ACRC emphasizes this approach perpetuates duplicative costs that threaten program viability.

Response to O-98-7

Comment rejected. Although this comment references section 18980.6.7(e)(1)(D), it does not offer any substantive proposal or objection. Rather, the commenter refers to other portions of their submission. To the extent those other portions propose changes or raise objections requiring responses, CalRecycle has provided such responses elsewhere.

Comment O-98-8

§ 18980.2.3 - Exemptions for Specific Material with Demonstrated Recycling Rates

Current Language: Provides pathway for exemption based on 65-70% recycling rates through alternative collection programs, but requires material-specific applications.

Recommended Modification: Add clarifying language that applications may be submitted for unified material streams collected through single programs where segregation would be impractical:

"(3)(A) The items are collected by alternative collection programs or programs that collect the items at non-residential sites. **Where a single alternative collection program systematically collects multiple types of covered materials that cannot practicably be segregated due to safety concerns, regulatory requirements, or operational constraints, the application may address such materials collectively as a unified stream."**

Rationale: Agricultural containers include both FIFRA-regulated pesticide containers (already exempted from SB-54 in statute) and non-FIFRA products (fertilizers, micronutrients, adjuvants, surfactants), collected as unified stream. Requiring segregation would impose impractical operational burdens and safety concerns.

Response to O-98-8

CalRecycle rejects the commenter's proposed change because it is unnecessary and more restrictive than statute requires. The purpose of section 18980.2.3(a)(3)(A) is to implement the requirement stated in Public Resources Code section 42041(e)(2)(H)(i)(I): the relevant collection must not be via residential sites. That provision imposes no restrictions based on whether the collection program collects multiple types of covered materials together. The proposed addition would contravene statute by suggesting otherwise.

Comment O-98-9

§ 18980.2.4 - Exemptions for Certain Covered Materials

Current Language: Subdivision (a) states exemptions "do not affect the status of the single-use packaging...as covered material and do not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees."

Recommended Modification: Add exception for exemptions granted through qualified stewardship program recognition:
"(a) Only a PRO or an Independent Producer may submit a request for an exemption pursuant to paragraph (3) of subdivision (a) of section 42060 or paragraph (4) of subdivision (a) of section 42060 of the Public Resources Code. The effect of such an exemption is that exempted covered material may be sold, offered for sale, imported, or distributed regardless of whether the covered material complies with section 42050 or

subdivision (i) of section 42057 of the Public Resources Code. The exemption does not affect the status of the single-use packaging or single-use plastic food service ware as covered material and does not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees**, except that exemptions granted pursuant to §18980.2.7(a-1) or §18980.2.8 shall relieve member producers of the recognized stewardship program from PRO participation and fee requirements while such recognition remains effective**."

Rationale: Clarifies that class-wide or program-level recognition mechanisms create genuine alternative compliance pathways, not merely temporary relief from specific requirements while maintaining all other obligations.

Response to O-98-9

Comment rejected for the reasons set forth in response to comment O-98-3.

Comment O-98-10

§ 18980.2.7 - Scope of Exemptions (Class-Wide)

Recommended Addition: See detailed proposed text in Section 5(a) above, adding subdivisions (a-1) and (a-2) to explicitly recognize qualified stewardship programs for agricultural containers.

Rationale: This section already provides authority for class-wide exemptions where justification applies to all items in the class. Agricultural containers constitute such a class based on: (1) specialized processing requirements under EPA regulations; (2) collection through agricultural supply chain rather than municipal systems; (3) safety concerns requiring non-commingling; and (4) existing stewardship infrastructure.

Response to O-98-10

Comment rejected for the reasons set forth in response to comment O-98-3.

Comment O-98-11

§ 18980.6.7(e)(1)(D) - Alternative Reduced Base Fee Rates

Current Language: "A PRO may set an alternative reduced base fee rate for a select covered material category if an alternative collection program is utilized."

Recommended Addition: Add requirement for maximum fee reduction where alternative collection performance substantially exceeds PRO capabilities:

"(D) A PRO may set an alternative reduced base fee rate for a select covered material category if an alternative collection program is utilized. The alternative reduced base fee rate shall consider the measurable performance of the alternative collection program relative to the statewide performance of curbside collection for those same materials. **Where an alternative collection program demonstrates recycling rates exceeding**

50% for materials that cannot be safely or effectively processed through standard materials recovery facilities, the PRO shall establish the maximum feasible fee reduction, recognizing that PRO fees collected for such materials are unlikely to fund collection infrastructure improvements for that material stream."

Rationale: Even if program-level recognition proves infeasible, § 18980.6.7(e)(1)(D) should require substantial fee reductions for alternative collection programs demonstrating superior performance. ACRC's 53.7% three-year average recycling rate for agricultural containers significantly exceeds any anticipated PRO performance for materials requiring specialized handling. However, ACRC notes that even reduced fees perpetuate duplicative cost structures, making full recognition under §18980.2.7 or § 18980.2.8 the preferred solution.

Response to O-98-11

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. PRC section 42053(d)(1) already requires the PRO to structure the producer fee schedule in a manner that reflects the costs to ensure covered materials meet the requirements of the Act, including applicable recycling rate requirements. To the extent certain materials are included in an alternative collection program that can demonstrate superior performance, those results and reduced costs of recycling must already be represented and reflected in the producer fee schedule pursuant to PRC section 42053(d)(1) and section 18980.6.7(e)(1)(D) of the proposed regulations. Therefore, the recommended change is not necessary and would impose an unnecessary and arbitrary limit with an imprecise standard on the PRO's discretion that is established under PRC section 42053.

Comment O-98-12

§ 18980.4 - Responsible End Market Criteria

Comment: ACRC supports the comprehensive responsible end market criteria in this section. ACRC's existing end market verification protocols align with these requirements:

- Periodic third-party audits per §18980.4.2
- Chain of custody documentation per §18980.4(a)(2)(A)
- Recycling yield tracking per §18980.4(a)(4)
- End market transparency per §18980.4(a)(2)

ACRC's end markets (agricultural drainpipe, nursery pots, landscaping products, underground conduit) satisfy the criteria in §18980.4(b) for producing recycled content feedstock meeting quality standards for new product creation.

No modification recommended. ACRC commits to continued compliance with these standards and is prepared to provide verification documentation to CalRecycle upon request.

Response to O-98-12

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-98-13

§ 18980.10 - Registration Requirements

Comment: ACRC supports clear registration requirements and commits to registering all member producers with CalRecycle. ACRC requests clarification on whether a recognized stewardship program may register members collectively or whether each member must register individually.

Recommended Clarification: Add to § 18980.10(a)(2):
"(2) A PRO shall register on behalf of each of its participant producers, except for those participant producers who choose to be reporting entities. **A stewardship program recognized under § 18980.2.7(a-1) or § 18980.2.8 may register on behalf of its member producers, provided that each member's registration information satisfies the requirements of paragraph (1) and the stewardship program maintains current contact information for all members."**

Rationale: Streamlines administrative burden while ensuring CalRecycle has access to complete producer information.

Response to O-98-13

Comment rejected for the reasons set forth in response to comment O-98-3.

Comment O-98-14

10. CONCLUSION & OFFER TO COLLABORATE

Summary of the Ask

ACRC respectfully requests that CalRecycle adopt regulatory language recognizing existing qualified stewardship programs as an alternative compliance pathway under SB 54. Specifically, ACRC requests:

Primary Request: Adoption of proposed § 18980.2.7(a-1) and (a-2) OR new § 18980.2.8 recognizing agricultural container stewardship programs that demonstrate:
• Operational history of at least three years in California
• Specialized alternative collection infrastructure
• Recycling rates of 50% or pathway to achieve this threshold
• Verified responsible end markets
• Industry funding without ratepayer burden

Secondary Request: If program-level recognition proves infeasible, expedited guidance on Independent Producer pathways with conditional approval under § 18980.7.1(b), allowing performance-based phase-in while preserving existing program infrastructure.

Minimum Request: If neither above option is viable, establishment of maximum fee reductions under § 18980.6.7(e)(1)(D) for alternative collection programs demonstrating superior performance, though ACRC emphasizes this approach perpetuates duplicative costs threatening program viability.

Readiness to Provide Further Data and Collaboration

ACRC stands ready to work collaboratively with CalRecycle to implement any of these pathways:

Data and Documentation Available:
• 33 years of California collection data (1993-2025)
• Annual CDPR reports (2012-2024) documenting collection and recycling performance
• Third-party audit reports of end markets and processing facilities
• Chain of custody documentation from collection through end markets
• End market verification demonstrating compliance with § 18980.4 criteria
• Member company information and contact details
• Collection site locations and service area maps
• Financial data demonstrating program funding adequacy

Collaboration Commitments:
• Coordination with Circular Action Alliance (CAA) on data sharing, education/outreach, and complementary infrastructure development (ACRC met with CAA on October 3, 2025 to initiate discussions)
• Participation in CalRecycle stakeholder processes for implementation guidance
• Annual reporting or as specified by CalRecycle
• Where requested, participation in pilot programs or demonstration projects
• Transparency in operations and willingness to address CalRecycle questions or concerns

Timeline Flexibility: ACRC recognizes CalRecycle faces substantial implementation challenges for SB 54. ACRC is willing to work within CalRecycle's timeline constraints while emphasizing that:
• Member companies are making 2026 dues decisions now based on regulatory clarity
• Program funding erosion is already occurring due to uncertainty
• Attracting and retaining new members is already compromised due to uncertainty
• Even modest delays in resolution create compounding risks to program viability

ACRC requests expedited consideration of these comments and, if possible, interim guidance by December 31, 2025 on whether CalRecycle intends to pursue any of the

proposed recognition pathways, enabling member companies to make informed decisions about 2026 participation.

Final Statement

California has the opportunity to demonstrate how Extended Producer Responsibility frameworks can preserve and enhance proven stewardship programs rather than disrupting them. ACRC's 33-year track record, specialized infrastructure serving rural agricultural communities, and alignment with SB 54's environmental objectives make it an ideal candidate for regulatory recognition.

The proposed pathways would:
• Advance SB 54's recycling and source reduction goals
• Preserve specialized collection infrastructure serving underserved rural areas
• Eliminate duplicative costs threatening program viability
• Maintain accountability through performance monitoring and periodic audits
• Provide a model for recognizing other qualified stewardship programs

We appreciate CalRecycle's consideration of these comments and look forward to working collaboratively to achieve optimal outcomes for California's environment and agricultural sector.

Response to O-98-14

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-99: Air-Conditioning, Heating, and Refrigeration Institute (Matthew Smithhisler)

Comment O-99-1

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) submits the following comments in response to CalRecycle’s (the “Department”) revisions to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act regulations.

AHRI represents more than 330 manufacturers of heating, ventilation, air conditioning, and commercial refrigeration (HVACR), and water heating equipment. Our member companies produce more than 90 percent of the residential and commercial air conditioning, heating, and commercial refrigeration equipment made in North America. It is an internationally recognized advocate for the HVACR industry and certifies the performance of many of the products manufactured by its members. In North America, the annual economic activity resulting from the HVACR industry is more than $211 billion. In the United States alone, AHRI member companies, along with distributors,

contractors, and technicians employ more than 700,000 people and more than 50,000 people in California.

Response to O-99-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-99-2

AHRI's comments focus on the exemption timeline and process for exempted materials. While the Department's proposed two-year exemption represents an improvement over the prior draft, AHRI recommends that the process provide additional flexibility and discretion for longer timespans to ensure that exemptions are practicable for important safety concerns.

Exemption Timelines

AHRI appreciates the Department's decision to amend the proposed exemption process to allow for a two-year period, which is an improvement compared to the previously proposed one-year exemption. However, we continue to emphasize that even two years may not always be sufficient given the long design and packaging cycles in the HVACR and water heating industry.

Our products are designed to last 10–15 years, with some lasting up to 30 years, and packaging changes often move in parallel with product development. The packaging that surrounds both refrigerant cylinders and pre-charged air-conditioning and refrigeration equipment is vital to the safe transport, handling, and storage of the units. For this reason, longer exemption timespans are important in providing stability for producers while ensuring product safety and regulatory compliance.

For straightforward cases of packaging redesign without broader product changes, timelines can be shorter. However, in many cases the process typically takes at least 18 months. This makes two years a more realistic exemption period, though even that may not always be sufficient. AHRI therefore recommends that CalRecycle should retain discretion to extend exemptions beyond two years where necessary to avoid undue regulatory burden and ensure safety and practicality in implementation.

AHRI respects the Department's intent for limiting product exemptions to a two-year application process. However, certain situations can require a longer exemption timespan. That is why AHRI encourages the Department to consider adding the discretion to permit certain industries a longer exemption timeframe to account for proper design and testing, and to allow for the continued use of unavoidable materials without risking undue regulatory burden or source reduction requirements relating to these materials.

Exemption Process

In addition, AHRI respectfully urges the Department to recognize the critical role that packaging plays not only in ensuring the safe transport of refrigerants and HVACR and water heating equipment, but also in preventing unintended emissions. Improper handling combined with inadequate packaging during shipping can lead to leaks, resulting in the release of fluorocarbons into the atmosphere, undermining climate protection efforts.

One example of AHRI's concerns relates to Section 42041(e)(2)(D) of Senate Bill 54, as enacted. This Section exempts packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration (OSHA) Hazard Communications Standard (29 C.F.R. 1910.1200). This Section could be understood to exempt the packaging that is designed to protect and safely transport pre-charged air conditioning and refrigeration equipment containing next-generation, low global warming potential, mildly flammable refrigerants that are regulated by OSHA HAZCOM (29 C.F.R. 1910.1200), or it could be interpreted more narrowly to exempt only the cylinders containing the same refrigerants in bulk. Reliable transportation and storage of pre-charged equipment that ensures the refrigerant stays contained in the system is paramount to our collective safety and climate-related goals.

The requirement to reduce single-use plastic packaging by 25% by 2032 presents significant compliance concerns for products regulated under OSHA HAZCOM. Requiring any amount of plastic weight reduction would significantly increase the transport and storage risks of these critical products. Much of the plastic used often consists of stretch film used to secure products for transportation and storage and has no viable substitute. Proper packaging must therefore be preserved as a critical safeguard against avoidable leaks.

Similarly, AHRI recommends expanding the scope in the draft rules to allow for more discretion by CalRecycle to interpret certain provisions and exemptions. For example, AHRI member products are intended for use for many years; however, per the current narrow definition of durable goods, AHRI members do not have a pathway under § 18980.2.3 (Exemptions for Specific Material with Demonstrated Recycling Rates) to receive credit for the long lifespan and low waste stream impact of these packaging materials.

AHRI recommends the Department consider an exemption process which does not impose a blanket two-year exemption but rather grants more discretion for longer timelines by CalRecycle. This will protect the safe transport and handling of AHRI members' products without negative impact on our industry. Additionally, greater discretion for the Department's exemption process would avoid unintended consequences such as incentivizing source reduction on safety packaging for pre-charged equipment and cylinders.

Conclusion
AHRI appreciates CalRecycle's work on these proposed regulations. While the amendment to provide a two-year exemption period is an improvement over the earlier draft, AHRI continues to recommend that CalRecycle provide additional flexibility and discretion for longer timelines where warranted. This is critical to account for industry-specific concerns and needs, particularly those surrounding the safe transport, handling, and storage of HVACR and water heating equipment.

AHRI looks forward to continuing to work with CalRecycle throughout the rulemaking and implementation process and remains available as a resource to the Department.

Response to O-99-2

Comment rejected. The commenter's principal recommendation is for CalRecycle to have "additional flexibility and discretion for longer timespans" for exemptions for materials. But the commenter refers to a "two-year period" for "the proposed exemption process" without identifying the proposed regulation at issue. If the commenter intended to refer to the exemption process established by section 18980.2.4, the proposed regulations already fully accommodate the commenter's recommendation: 18980.2.4(g) explains that CalRecycle can grant exemptions for up to five years, when warranted. If the commenter intended to refer to the exemption addressed in section 18980.2.3, the commenter's recommendation fails because the relevant statutory provision (Public Resources Code section 42041(e)(2)(H)) expressly limits exemptions to two years. CalRecycle cannot discern any other provisions to which the commenter might have intended to refer as the "exemption timeline and process for exempted materials" with a two-year period.

Lastly, the commenter appears to erroneously assert that an exemption application requirement applies to packaging for goods identified in Public Resources Code section 42041(e)(2), including packaging for hazardous or flammable products (42041(e)(2)(D)). Such packaging is, by definition, not "covered material," so there can be no exemption requirement, and the proposed regulations do not suggest otherwise.

The commenter also makes the vague recommendation, "expanding the scope in the draft rules to allow for more discretion by CalRecycle to interpret certain provisions and exemptions." While CalRecycle cannot interpret that recommendation with certainty, it appears to suggest that CalRecycle should reserve discretion to establish statutory interpretations in the future. CalRecycle can only issue rules based on statutory interpretations through the formal rulemaking process. If the commenter intended to suggest otherwise, CalRecycle cannot further respond because the request is not sufficiently clear or specific for CalRecycle to identify a change to consider. Moreover, the commenter provides no direction as to how CalRecycle might revise the proposed regulation to allow for more discretion. Accordingly, no change is appropriate.

To the extent the commenter directs its recommendation at section 18980.2.3 specifically, CalRecycle rejects the implied assertion that CalRecycle has

interpreted the scope of Public Resources Code section 42041(e)(2)(F) too narrowly. Without limiting that scope so that it does not exclude packaging for goods that may be fully consumed immediately after acquisition or for goods whose packaging is typically discarded when use of the good begins, there would be no practical bounds to what could be considered not "covered material." Moreover, the commenter erroneously refers to the "definition of durable goods," but section 18980.2.3 contains no such definition. See, also, CalRecycle's response to comment O-63-5.

O-100: City of Livermore (Stephanie Egidio)

Comment O-100-1

This letter is in response to the formal draft of the SB 54 regulations released on August 22, 2025. The City of Livermore appreciates CalRecycle's responsiveness to several concerns and recommendations that were raised by local government and other stakeholders since the May 2025 draft. While we understand the need to finalize regulations given the regulatory restart, there are still several areas in the draft regulations that we believe do not fully align with the intent of the law. We offer the following comments and suggested regulatory revisions to help achieve alignment with the law's intent to accelerate progress toward circularity for packaging and foodware, protect ratepayers, and make local governments whole for costs associated with the law's implementation. Thank you for your consideration of the recommendations below.

Response to O-100-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it only references the commenter's recommendations; it doesn't set those recommendations forth. To the extent the issues raised require responses, CalRecycle has addressed them in response to other portions of the submission discussing the issues in detail.

Comment O-100-2

Article 2: Covered Material and Covered Material Categories

Categorically Excluded Materials – 18980.2

The May 2025 version of the draft regulations added for the first time in the rulemaking process a new pathway for packaging components to be excluded from the law if it is "necessary to comply with rules, guidance, or other standards issued by the [USDA] or [FDA] … to prevent microbial contamination or to maintain the safety or structural integrity of packaging…."

We appreciate the revisions made in section 18980.2(a)(2) of the August 2025 (current) version of the draft regulations to clarify these exclusions only apply when "it is not reasonably possible to use other packaging or packaging components…" and requiring

that entities must provide rationale to the Department including the conflicting federal regulation and explanation as to why no reasonably possible alternative packaging is available. We also support the addition requiring the Department to review exclusion requests and maintain a public list of determinations.

The Department has stated this new categorical exclusion is intended to provide further clarity to statute section 42060(b) which, in summary, states that SB 54's regulations should not conflict with other federal packaging requirements. We believe that should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle.

Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

The intent of SB 54 is to accelerate progress toward circularity in packaging and foodware, protect ratepayers, and ensure that local governments are fully reimbursed for costs associated with implementation. Establishing a pathway for certain materials to be excluded from the statute would undermine this purpose, as responsibility for the collection and processing of those materials would revert to local jurisdictions. This cost shift would ultimately burden ratepayers and run counter to the law's objectives. Again, we believe that producers can utilize the exemption pathway for the reasons listed above.

Recommendation:
We urge CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Should the Department determine section 18980.2(a)(2) must remain in the regulations, we would like to offer the following revisions to improve the current approach:

- Exclusion vs. exemption rationale – Entities should be required to explain why an exemption under section 2.4 does not apply in their case, providing the statutory basis to exclude their packaging or component from the law entirely rather than request an exemption based on unique challenges or health and safety reasons.

The Department must be able to evaluate the basis for an exclusion vs. exemption and redirect requests to a more appropriate exemption pathway when applicable.

Suggested revisions to section 18980.2(a)(2)(A):
"The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations or rules, ~~or guidelines,~~ and explain why no reasonably possible alternative packaging or packaging component is available and why the exemption pathways outlined in section 189890.2.4 do not apply."

Note: We also recommend removing "guidelines" (as shown above), as federal guidelines are not always statutorily compelling.

- Time limits – Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2-5 years, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Innovation and development of responsible end markets will likely create new compliance pathways for materials that are currently unable to meet the requirements of the law. Excluding currently challenged materials from the law indefinitely goes beyond statutory intent, and should future conditions change, there must be a pathway to integrate excluded material back into the law.

Response to O-100-2

CalRecycle partially accepts and partially rejects this comment as described in response to comment I-59-2, which is substantively the same as this one.

Comment O-100-3

We are also opposed to the addition of language that exempts packaging used for over-the-counter drugs (18980(a)(6), and we oppose the regulatory change that exempts secondary and tertiary packaging of exempted and excluded primary packaging (18980(b)). We feel these changes go beyond the intent of the authors and many stakeholders that negotiated this bill.

Response to O-100-3

CalRecycle rejects this comment for the reasons provided in responses to comments O-49-1 and O-33-6.

Comment O-100-4

Article 3: Evaluations of Covered Material and Covered Material Categories

Eligibility for Being Labeled "Compostable" – 18980.3.3

AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of

desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (PRC 42357(g)(E))

Section 18980.3.3(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste *"if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste."*

This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54 (if other criteria are met). The intent of section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. Section 18980.3.3(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in section 42357. Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. Further, while the SB 54 regulations will only affect food ware and packaging, including this definition in these regulations could open the door for the same or similar circular logic to be applied to other products seeking to be labeled compostable.

The facilities that process Livermore's organic waste do not accept compostable foodware or packaging unless it is 100% fiber-based and free of plastics. Allowing otherwise creates an avenue for non-compostable material to enter the organic stream, contaminating material that is directly given back to the Livermore community. This poses risks to the health of our community that utilize compost given away for home gardens and community gardens that grow food and feed are most vulnerable population. Additionally, the City of Livermore has already made significant progress in supporting and encouraging businesses to transition to reusable foodware. We believe that this proposed framing fosters confusion and is inconsistent with SB 54's intent to accelerate circularity and reuse.

Recommendation:
We recommend deleting the following sentence from section 18980.3.3(5) of the draft regulations: "They must satisfy the requirement set forth in subparagraph (E) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code concerning association with the recovery of desirable organic wastes. ~~For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.~~"

Response to O-100-4

CalRecycle rejects this comment for the reasons provided in responses to comments I-59-3 and O-78-7.

Comment O-100-5

Article 4 – Responsible End Markets

Alternative Recycling Technologies – 18980.4(d)

PRC section 42041(aa)(5) states that the SB 54 regulations "shall encourage recycling that minimizes *generation* of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall also include criteria to exclude plastic recycling technologies that *produce* significant amounts of hazardous waste." However, section 18980.4(d)(B) in the current version of the draft regulations goes against this statutory direction and shifts the standard from the *generation or production* of hazardous waste to its *management*.

The draft regulations enable — not exclude — technologies that produce significant amounts of hazardous waste, unlawfully shifting the standard from the production of hazardous waste (as required by the statute) to its management. Therefore, the threshold of avoiding only those technologies where hazardous waste is improperly managed and "presents an imminent and substantial risk of harm to public health or to the contamination of the environment" does not achieve the statutory mandate. Further, the draft regulations state that any hazardous waste handled and disposed of in "substantial compliance with an applicable permit" does not pose an imminent and substantial risk. This, too, conflicts with statutory guidance and legislative intent to exclude technologies based on the generation, not management, of hazardous waste. Additionally, the regulations still fail to address the statutory requirement to encourage minimization of the "generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." (The draft regulations currently only address hazardous waste generation/management.) We urge the Department to add provisions to address these critical concerns and meet the statutory directives.

Response to O-100-5

CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

Comment O-100-6

Compostability of plastic – 18980.4(a)(4)(B)

We appreciate clarification of the use of the term "fully biologically decompose," and reference to the ASTM D-6400 standard. We strongly support the Department's requirements for items "partially or wholly comprising plastic." Visible particles of

compostable plastic in compost products hamper the marketability of those products. There is also a growing body of research showing the compostable microplastic residue has detrimental effects on plant and soil health, and potentially human health.

Response to O-100-6

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-100-7

Compostability of paper and fiber – 18980.4(a)(4)(C) and 18980.3(c)(4)

We support the regulatory approach to have different compostability standards for paper and fiber than for plastic. However, with the requirement for testing from an independent laboratory in section 18980.3(c)(4) removed, we are concerned the new proposed compostability standards for paper and fiber may provide a perverse incentive for bad actors to maintain vague or otherwise insufficient documentation demonstrating that the fiber truly is “wholly derived from natural resources.” Some form of verification of or attestation that a product is wholly derived from natural resources should be required to be submitted to the Department.

Response to O-100-7

CalRecycle rejects this comment for the reasons provided in response to comment O-68-6.

Comment O-100-8

Article 8 – Producer Responsibility Plan RequirementsProducer Responsibility Plan Requirements

Reimbursable costs – 18980.8(g)

We appreciate the addition to this section requiring that the PRO or Independent Producer “first” notify the local jurisdiction when costs are deemed covered for a recycling service provider. The notification of payments prior to issuance to service providers supports the transparency needed to help ensure producer payments are not being made for costs already included in solid waste rates.

Response to O-100-8

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-100-9

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Local jurisdiction requirement – 18980.11(b)

PRC section 42060.5 states "local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material" contained on the statewide recyclable / compostable list. The current draft of the regulations provides that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities."

We believe that including the requirement to also transfer recyclable and compostable covered material goes beyond the statutory requirement for local jurisdictions. This framing also makes it difficult to attribute violations to the correct party, muddying the distinction of where the enforceability of a jurisdiction for a violation of this requirement ends and the point at which that responsibility transfers to a recycling service provider or an intermediate supply chain entity. Jurisdictions need clear guidance on what's expected for compliance and how compliance will be determined.

Recommendation: Delete ~~"and transfers it to responsible end markets directly or to intermediate supply chain entities."~~

Response to O-100-9

CalRecycle rejects this comment for the reasons provided in response to comment I-59-7.

Comment O-100-10

Article 13: Enforcement Oversight by the Department

The draft regulations must recognize that SB 54's Enforcement Authority is limited to producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes under AB 939. Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they include the required recyclable or compostable covered materials in their programs.

We appreciate the CalRecycle team's openness to feedback and continued dialogue to ensure the final regulations will provide a foundation for successful implementation of the law.

If you have any questions, please contact my office, 925-960-4010.

Response to O-100-10

Comment rejected for the same reasons explained in response to comment I-59-8.

O-101: California Product Stewardship Council (Bani Dhaliwal)

Comment O-101-1

The California Product Stewardship Council (CPSC) appreciates the opportunity to provide comments on the proposed permanent regulations implementing Senate Bill 54 (Allen, 2022), as noticed by CalRecycle in its August 22, 2025, Notice of Proposed Action (Title 14, Division 7). These proposed regulations represent the critical next step in implementing Senate Bill 54 (Allen, 2022), California's landmark packaging Extended Producer Responsibility Bill.

CPSC strongly supports and endorses the adoption of permanent regulations to allow the program to begin without setbacks. From our perspective, it's more important and impactful for the program to stay on track for adoption of the final regulations before December 31, 2025 than to give way to programmatic requests that are likely to require new legislation to achieve.

While the draft regulations reflect a smaller program scope than originally intended, moving forward as is essential to establish producer responsibility, reduce plastic pollution, and build the foundation for future program updates. Timely adoption will provide CalRecycle, producers, and stakeholders with the certainty needed to make decisions in 2026 and 2027 while the Plan is under development.

If there are still opportunities to make edits to the regulations, CPSC provides the following targeted recommendations with the acknowledgement that to incorporate and accomplish these aspects may require future legislation, if not included in the final Plan.

Response to O-101-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-101-2

1. Section 18980.1.1 Producer Identification

We support CalRecycle's refinements clarifying brand owners, licensees, or distributors as responsible producers. However, CalRecycle must ensure clarity in brand/franchise arrangements so that the responsibility lies with producers that control packaging design, not small retailers or franchisees. Transparent documentation of producer designation is essential.

Response to O-101-2

Comment rejected. No change is appropriate to address the commenter's concerns because, as explained in responses to comments O-96-4 and O-82-15, the proposed regulations establish how the statute applies to the franchisor/franchisee relationship relates to identifying the producer. Because a lawful franchisor necessarily will be "in the state," as that concept is interpreted in section 18980.1.1(a), the proposed regulations ensure that the franchisor, not small retailers or franchisees, will be an in-state brand or trademark owner for purposes of Public Resources Code section 42041(w)(1) and (2), which designate the brand or trademark owner as the producer.

Comment O-101-3

2. Section 18980.2.2 Exclusion of Certain Types Of Packaging: De Minimis Exemption

The exemption for producers under $1 million in annual sales remains unchanged. While this reduces burden on microbusinesses, it risks excluding significant volumes from oversight. We recommend adding a tonnage threshold and requiring minimal data reporting from exempt producers to maintain program integrity.

Response to O-101-3

Comment rejected. This comment appears mislabeled as one directed at section 18980.2.2, which does not concern the "exemption for producers under $1 million in annual sales." That exemption cannot be modified because it is established by statute, which does not authorize CalRecycle to establish other thresholds, such as one based on tonnages.

Comment O-101-4

3. Section 18980.2 Categorically Excluded Products

The regulations clarify exclusions for medical producers, hazardous materials, and food-related packaging. CPSC recommends clearer language on CalRecycle's decision-

making process if the Federal Guidelines misalign with the program's goals for reuse and source reduction. We caution against overly broad exemptions and urge CalRecycle to require public disclosure of exemption claims. We understand pre-emption might prevent CalRecycle from making product design requirements for packaging regulated by other agencies.

Response to O-101-4

Comment partially rejected and partially accepted. The commenter notes that the regulations "clarify exclusions for medical producers, hazardous materials, and food-related packaging," but only discusses the situation where "Federal Guidelines misalign with the program's goals for reuse and source reduction." CalRecycle therefore understands this comment's recommendation only to concern the exclusion for food-related packaging, as provided in section 18980.2(a)(2). No change is necessary to address federal guidelines that "misalign with the program's goals for reuse and source reduction." The commenter does not explain what it would mean for federal guidelines to "misalign" with reuse and source reduction, but CalRecycle interprets that not to refer to circumstances where it would be impossible to comply with both California and federal laws or regulations. Mere misalignment or mismatch between state and federal law does not justify excusing any covered material from obligations under the statute, and packaging that is "reusable" under the standards provided in the regulations is not covered material and would not be subject to any other requirements of the Act. Moreover, a direct conflict regarding source reduction is not possible because source reduction concerns the generation of waste from plastic covered material overall, not federal requirements imposed on particular packaging materials. Even more, the exclusion described in section 18980.2(a)(2) cannot possibly interfere with meeting the statute's source reduction requirements because applying the exclusion can only decrease the amount of packaging considered "covered material" included in the 2023 baseline; it cannot render compliance with the Act and federal law impossible.

Regarding the commenter's general caution against "overly broad exemptions," no specific response is needed to such a general, overarching concern; it does not direct an objection at any particular regulatory provision or recommend a change to any provision. However, if the commenter intended to refer to the scope of section 18980.2(a)(2), CalRecycle partially accepts this comment. The revisions to the regulations preserve the intended scope of 18980.2(a)(2), and that scope is properly tailored to the mandate in Public Resources Code section 42060(b): It applies where compliance with the Act and federal law is impossible. On that basis, CalRecycle rejects the commenter's objection to the scope itself. However, as CalRecycle has explained in response to comments raising concern over that scope (e.g., O-13-3 through O-13-6, I-19-1, I-59-2, O-93-9, O-75-2, and B-47-3), CalRecycle accepts this comment to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws,

or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See, in particular, CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Regarding "public disclosure of exemption claims," no change is necessary because, subject to protections for trade secrets, records submitted to CalRecycle are subject to disclosure upon request, and 18980.2(a)(2) already does require CalRecycle to publish information about the notices it receives claiming that the exclusion applies.

Comment O-101-5

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

The removal of specific 30/40/65% recycled content mandates in the proposed regulations weakens market uncertainty and cripples California's progress toward a circular economy. CPSC urges CalRecycle to reinstate minimum recycled content requirements by material type to create stable market demand and reduce dependence on virgin plastics.

We also recommend aligning these requirements with SB 343 (Allen, 2021) – Accurate Recycling Labels. By pairing SB 54's recycled content mandates with SB 343's labeling standards, CalRecycle can close the loop, ensuring that materials labeled as recyclable are technically recyclable, and have consistent mandate demand in manufacturing markets.

Response to O-101-5

Comment rejected. CalRecycle cannot discern what the commenter describes as the "removal of specific 30/40/65% recycled content mandates" and "SB 54's recycled content mandates." The statute does not contain any recycled content mandates, nor does it confer authority for CalRecycle to impose any.

Comment O-101-6

5. Section 18980.9 Source Reduction Baseline Report

While the 25% source reduction requirements by 2032 remain, interim milestones have been excluded from the regulations. We recommend restoring 10% by 2027 and 20% by 2030 benchmarks to ensure steady progress and accountability rather than backloading reductions.

Response to O-101-6

CalRecycle rejects this comment as section 42057(a)(1) of the PRC requires producers, individually or through a producer responsibility organization (PRO),

to achieve an aggregate 25 percent reduction by weight and number of plastic covered material by January 1, 2032, relative to the 2023 baseline. However, the statute does not establish any requirement for regulatory interim dates or milestones prior to 2032, and as such, at this time CalRecycle does not have express authority to establish such new percentage targets through regulation. Instead, the Department will be able to monitor progress through annual reporting. Further, the proposed regulations also already provide continuous accountability through the required annual reports, including in section 18980.9.1 of the proposed regulations. As such, the requested specific additional dates are both unnecessary for the reasons stated above, and would be inconsistent with statutory authority, resulting in the comment being rejected.

Comment O-101-7

6. Section 18980.6.7 Eco-Modulated Fee and Fee Schedule

The proposed regulations omit eco-modulated fees. We recommend adopting differential producer fees that reward recyclability, durability, and safer chemistry while penalizing problematic materials. Fee schedules should also reflect higher collection costs in rural and disadvantaged communities to ensure equitable service.

Response to O-101-7

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including in PRC sections 42051.1, 42053, and 42060, and no change is necessary to the implementation of the Act. To the extent this comment recommends adopting differential producer fees that reward recyclability, durability, and safer chemistry while penalizing problematic materials, and that reflect collection costs, such considerations are already included in the eco-modulated fees required under PRC sections 42053(c)-(e) and sections 18980.6.7(b) and (f) of the proposed regulations. To the extent this comment may be concerned with the timeline for eco-modulated fees, see the response to comment B-6-6.

Comment O-101-8

7. Section 18980.8 Producer Responsibility Plan: Chemical Recycling

Both Mechanical and Chemical processing have human and environmental impacts and CPSC believes the program should be technology agnostic and performance based for each facility processing materials from the program. Of course, there are some technology exclusions with waste-to-energy and incineration counting towards recycling. The responsibility is on the PRO to develop and monitor compliance mechanisms for the processors to ensure they are all: 1) not generating hazardous waste; 2) minimizing GHG impact; and 3) moving materials to responsible end-markets. If the PRO cannot prove those three things to CalRecycle in their annual reports, then the processed materials count as disposal, not recycling.

Research has shown chemical processing technologies are unproven to deliver cost-effective or environmentally sound circularity at scale, so the PRO is not making

decisions in a vacuum with the support of the scientific community. A recent comparative study by Uekert et al. (2023) found:
• Mechanical recycling remains the most cost-effective and environmentally beneficial option, though limited in quality and circularity.
• PET glycolysis shows the best balance of cost and environmental performance among chemical processes.
• Other methods like enzymatic hydrolysis, pyrolysis, and gasification remain too resource and energy intensive or costly to be viable.

CPSC emphasizes that under California law, “recycling” does not include fuel production or combustion, and processes must meet stringent requirements to qualify as “recycling,” including responsible end-markets, residual thresholds, GHG performance, and limited hazardous waste generation. Simply stockpiling outputs such as flake or intermediates cannot count as “recycling.”
To safeguard California’s climate and health goals, CPSC recommends that CalRecycle:

• Explicitly exclude fuel production and energy recovery from qualifying as recycling.
• Require continuous improvement in yields, solvent reduction, and energy efficiency, with emphasis on expanding viable closed-loop solutions for polyolefins and food service ware plastics, where recycling options remain most limited.
• Ensure all chemical processes meet California’s recycling standard and prove they achieve responsible end-markets and human health protections prior to receiving credit under SB 54 (Allen, 2022).

Response to O-101-8

Comment rejected. No regulation is needed concerning fuel production and energy recovery because statute (Public Resources Code section 42041(aa)(2)(C) and (D)) already disqualify them from being considered recycling. Regarding "continuous improvements in yields, solvent reduction, and energy efficiency," CalRecycle declines to make the requested change because the statute does not confer authority on CalRecycle to set such prescriptive standards and impose them on recyclers. Regarding the final recommendation (concerning chemical processes and responsible end markets), article 4 of the proposed regulations address responsible end market requirements, which apply to all recycling technologies (chemical or otherwise).

Comment O-101-9

8. Integration with Other EPR Programs
SB 54 will pave the way for future EPR programs, including the various programs that would be created by bills sponsored by CPSC including SB 707 (Newman): Responsible Textile Recovery Act of 2024. CPSC will continue to stay engaged in the conversation through participation in the SB 54 Advisory Board, involvement in establishment of the regulations, and through discussions in our CPSC Policy & Education Advisory Committee (PEAC).

Thank you for your work on this historic piece of legislation that will address plastic pollution, improve our materials management system, and protect our environment.

Response to O-101-9

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-102: Environment and Enterprise Strategies (Holly Kaufman)

Comment O-102-1

I am writing regarding the permanent SB-54 regulations released on August 22, 2025. SB 54 was passed in order to improve the management of certain plastic wastes and reduce costs doing so, while satisfying the economic needs to the greatest extent possible of all the stakeholders involved in the system. Unfortunately, as currently drafted, the revised regulations fall short in achieving the goals of the carefully negotiated legislation.

It is critical that the regulations implement the law as it was intended, both to maintain support from industries who actively worked for passage of SB 54 rather than the competing ballot measure, and because California's implementation of SB-54 is being closely watched by other states and policymakers who are looking at implementing similar legislation. I urge CalRecycle and the Governor's office to align the regulations with SB 54's legislative intent to create a fair, effective, and transparent producer responsibility framework that promotes affordability for consumers, prevents loopholes, and builds consumer trust.

My main concerns are that some provisions go beyond statutory authority, including, critically, both enforcement against local governments and the exclusion application process. Likewise, sufficient clarity does not exist in order for producers, local governments, and other impacted entities to understand their obligations and therefore will not be able to create a working system. In addition, the reuse and refill deadlines are unrealistic given the lack of early staffing and preparation by the Producer Responsibility Organization (PRO).

To reiterate, for SB 54 to be a success, the regulations must reflect the law's intent to protect the environment while creating economic benefit. The law must be implemented as negotiated and passed. Otherwise, the regulations undermine the years of negotiations and ultimate agreement that led to passage of the law. Californians want the environmental and economic benefits that

the law will provide if implemented as intended. Californians also do not want to create unfair markets that would risk litigation, jeopardize California's leadership and, putting packaging extended producer responsibility (EPR) programs at risk across the country . Thank you for the opportunity to comment and for your continued efforts to develop fair and sound regulations.

Response to O-102-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendations for revisions to the proposed regulations.

O-103: Kate Bell Strategies (Kate Bell)

Comment O-103-1

I. Ability for entities to reach agreement on who will report to CAA with respect to a given item.

Recommendation: Model language like Minnesota's EPR statute to help ease the burden on industry and allow businesses to comply with this law effectively.

- In defining producers, Minnesota's statute, Minn. Stat. § 115A.1441, Subd. 26(a)(6), states that "[a] person is the producer of a covered material sold, offered for sale, or distributed in or into this state, as defined [in the preceding clauses], except: (i) where another person has mutually signed an agreement with a producer . . . that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material under this act. In the event that another person is assigned responsibility as the producer under this subdivision, the producer [under the preceding clauses] must provide written certification of that contractual agreement to the producer responsibility organization[.]"

- This language allows for an entity identified as a producer to contractually assign that responsibility to any willing party, so long as that party (1) joins a registered PRO and (2) provides written certification of the contractual agreement to the PRO.

- Not only will this allow businesses to comply with SB54 in a way that fits their individual business models, but it will cut down significantly on administrative burden to both CalRecycle and CAA in having to field questions and give guidance on every possible producer obligation scenario that might arise.

Additional Context:

- We have encountered multiple instances where reasonable minds may differ as to whom the Obligated Producer should be under the law. *(Is the item "branded?" What if it is co-branded? Is the party a "licensee" of the brand?)* At some point the discussion must end to meet deadlines, and the parties necessarily come to a contractual agreement to settle the debate.

- As written, the draft SB54 regulations appear to allow for this, but as written, the reader must first cross-reference at least two statutes and sift through extremely long hierarchies for determining the producer of both food service ware and packaging.

- With so much to parse through, the process of identifying who is or may be the obligated producer in California is rife with opportunity for multiple (and conflicting) interpretations.

- Even though the law provides for a scenario where there are "multiple brands or trademarks that may be designated [as the producer]", proposed 14 CCR 18980.1.1(e)(5) states "**the owners of brands or trademarks may agree among themselves to designate one of the brands or trademarks [as the producer], provided that the owner or a licensee of that brand or trademark satisfies the criteria to be the producer under this subdivision**."

- Even assuming all parties can agree on reaching this point in the "decision tree", it appears that the terms "owners of brands or trademarks" and "owner or a licensee of that brand or trademark" are interchangeable, which muddies the waters on who may enter into such an agreement.

- **We do not believe California intends to prohibit contractual agreements on the topic – especially since the ability to enter into such an agreement clearly exists in some form as written.**

- **As it stands, however, such agreements appear to be technically allowed, but the waters are so muddied that it will be nearly impossible for parties to**

come to any agreement – and certainly not without long and protracted negotiations.

Response to O-103-1

CalRecycle rejects this comment for the reasons stated in response to comment I-61-2.

Comment O-103-2

II. Narrowing scope of Covered Materials to only those that enter the residential waste stream.

Recommendation: All packaging & food serviceware that is destined for the residential (including single- family and multi-family) sector should be included in EPR programs. Packaging and food serviceware disposed of at restaurant should NOT be in scope (aka dine-in deduction).

- Colorado EPR law has language for this: "Packaging material" covered under the law explicitly does NOT include packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer.

- To further this point, AB 827 requires restaurants/QSRs to provide front of house collection for compost, recycling & landfill.

- The industry manages and pays for back of house packaging recovery, so commercial/B to B should be out of scope.

Response to O-103-2

Comment rejected. The commenter requests that only items "destined for the residential . . . sector" be included in "EPR programs." That request concerns the scope of statute, not the proposed regulations, which cannot alter the scope of statute. To the extent the commenter intended to argue that the statute itself does not encompass items "disposed of at restaurant [sic]," that interpretation is unfounded, and the only support offered is that the restaurant "industry manages and pays for back of house packaging recovery." That assertion, as well as the fact that restaurants are subject to other laws requiring them to collect certain waste separately, has no apparent relevance to statutory interpretation here.

See, also, CalRecycle's response to comment O-38-1 regarding the application of statute to commercial (or "B2B") packaging.

Comment O-103-3

III. Request extension of upcoming reporting and fee deadlines based on timing of final regulations and presumably guidance/education coming subsequent to same

Response to O-103-3

Comment rejected. With regard to extending upcoming reporting deadlines, the date of July 1, 2026 is necessary to ensure the statutory requirements are sufficiently met, including section 42051(b) of the PRC. Section 42051(b) requires that upon approval of a plan or commencing January 1, 2026, whichever is sooner, a producer shall not sell, offer for sale, import, or distribute covered materials in the state unless that producer is covered by a PRO plan or is approved by CalRecycle as an Independent Producer. Therefore, by no later than January 1, 2026, producers should be complying with the Act and regulations. Thus, requiring reports to be submitted to CalRecycle on or before July 1, 2026 gives the Department six months after the latest possible statutory date. This provides a balance by allowing adequate time for all reporting entities to gather the necessary information for the report, while also ensuring CalRecycle receives the information as expeditiously as possible to make any necessary updates to the source reduction baseline. As this regulation is necessary for implementation of the act and aligns with statutory requirements while striking a balance between both adequate time for the reporting entities and adequate time for the Department, no change is required as it would undermine the above.

With regard to extending upcoming fee deadlines, the proposed regulations are consistent with the requirements of the Act, including in PRC sections 42053, 42060, and 42064, and no change is necessary to the implementation of the Act. PRC section 42053(b) provides that the PRO must charge its producers fees during the first two years of operation and during the preparation of the PRO plan, and PRC section 42064(e)(1) provides that producers' annual environmental mitigation surcharge payments must commence in the 2027 calendar year. The proposed regulations providing for the payment of producers' fees, including section 18980.6.7, are consistent with these statutory requirements and timelines. Therefore, no change to the proposed regulations is necessary.

O-104: The Recycling Partnership (Dylan de Thomas)

Comment O-104-1

The Recycling Partnership Represents the Recycling System

The Recycling Partnership's mission is to build a better recycling system – one that delivers the economic and environmental benefits our communities and the hundreds of thousands of people who work throughout the recycling industry deserve.

With a major focus on advancing EPR and related policies, The Recycling Partnership helped lead negotiations leading to enactment of SB 54 in 2022 and we have been actively engaged ever since. We are dedicated to maximizing the expansive circular economy benefits of this novel statute and establishing it as a successful model to help drive continued progress in extended producer responsibility (EPR) nationwide.

Thank you to CalRecycle for your continuing efforts to craft workable SB 54 regulations that balance diverse stakeholder concerns.

We are not aware of a more challenging, complex or consequential state rulemaking process than the one CalRecycle is leading for SB 54. Your dedication to listening to and respecting all viewpoints while seeking objectively valid interpretations of statutory intent is impressive. Many of our top rulemaking concerns and suggestions have been addressed, sometimes in unexpected ways that bridge stakeholder perspectives.

At this critical juncture, with the future success of SB 54 hanging in the balance, we have grouped our comments in this formal rulemaking 45-day comment period into two priorities as described below.

Response to O-104-1

Comment rejected. No response is necessary to this comment because it contains introductory or summary remarks only and does not set forth requested changes to the proposed regulations or objections concerning the rulemaking process.

Comment O-104-2

Priority 1: To help SB 54 implementation proceed to on-time PRO plan approval and EPR program launch, we support CalRecycle's goal to adopt final regulations by January 1, 2026.

We do not take this position lightly.

We understand that to achieve this goal, CalRecycle must avoid substantive changes that would trigger an additional 15-day public comment period and associated process steps. And yet, as our comments below make clear, we have significant concerns over certain aspects of the current draft regulations.

The SB 54 statutory timeline and sequencing requirements for implementing the new EPR system, attaining mandated performance targets, and executing producer packaging changes are already exceedingly challenging, if not demonstrably impossible in many cases, to satisfy within the statutory deadlines based on logistical and practical considerations alone. Prolonged needs assessment delays and abandonment of the first formal rulemaking have further exasperated the PRO's time crunch to integrate needs assessment findings, final rulemaking standards and initial producer reporting into a

compliant program plan and fee schedule that will rapidly advance effective compliance strategies.
In this context, we conclude that adopting regulations as soon as possible is essential. **However, due to our continuing concerns and the need for more clarity on certain key issues, we urge CalRecycle to publish additional, plain-language guidance documents and announce plans for an additional rulemaking at the earliest possible time.** The remainder of this submission identifies our priority regulatory concerns and recommendations, including suggested topics ripe for CalRecycle guidance.

Response to O-104-2

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment recommends adopting the proposed regulations as soon as possible, CalRecycle is currently following the rulemaking process to adopt the proposed regulations, including by complying with all necessary timeframes and opportunities for public participation. To the extent this comment recommends publishing additional guidance documents and announcing plans for an additional rulemaking, these recommendations are not within the scope of the proposed regulations and do not relate to the present rulemaking process.

Comment O-104-3

Priority 2: If CalRecycle does make any substantive changes to the draft regulations as a result of this 45-day
public comment period, the following are our top priority concerns and recommendations.
Our understanding is that changes that are not substantial would not trigger an additional public comment period, and changes that may be substantial but are closely related to existing draft text may trigger an additional 15-day (as opposed to 45-day) comment period. As such, the following recommendations focus on changes we believe may be non-substantive or at least closely related to existing text.

Response to O-104-3

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-104-4

Concern 1: As currently written, the newly added categorical exclusion for federal regulation conflicts in Section 18980.2(a)(2) could potentially be highly disruptive to SB 54 implementation.
We appreciate CalRecycle's efforts to refine and narrow the scope of this newly added provision so that it applies to only a small number of products with clear conflicts. And

we acknowledge that some stakeholders may overstate their certainty that the provision will gut the impact of SB 54. But **it does appear plausible that this provision could potentially result in an categorical exclusion submissions to CalRecycle**. Certainly, a wide range of products are subject to regulation under the Food Safety Modernization Act (FSMA). And our understanding is that the Hazard Analysis and Critical Control Points (HACCP) documents prepared by companies to comply with FSMA and other federal regulations (which identify risks and mitigation strategies including packaging specifications) are not generally subject to review and approval by federal regulators but are rather controlled by the companies themselves. Some experts in this field predict companies could shift to tailoring their HACCPs specifically to meet SB 54 exclusion requirements. We are concerned that the process defined in draft regulations makes categorical exclusions 1) too easy to obtain; and 2) too burdensome and time-consuming for CalRecycle to limit through meaningful oversight reviews and determinations. Exclusion claims are apparently effective upon submission, pending CalRecycle resource intensive review, research and consultation with state and federal agencies, and information requests with a 60-day turn around all needed to finally reach potential rejection and an additional 180-day waiting period before the items are considered covered materials under SB 54. Given other SB 54 timing and resource demands, it seems reasonable to doubt CalRecycle's ability to execute a rapid and robust review of many submissions and, even if that is possible, the process could still result in prolonged uncertainty in PRO planning and fee setting that could take years to resolve. We believe that not only is the categorical exclusion not authorized under SB 54, but it is also not needed given the current provisions in 18980.2.4 allowing for limited exemptions based on specific health and safety or unique compliance challenges. These provisions provide a robust process that ensures all producers and targeted materials comply to the maximum extent possible. Conversely, the draft regulations appear to be based on a hypothetical need to change packaging that will depend on the types of PRO recycling system improvement strategies employed and their outcomes that cannot be known at the outset of the program.

Recommendations to Address Concern 1 Related to Categorical Exclusions for Federal Regulatory Conflicts Regulations Section and Topic
18980.2(a)(2) Categorical Exclusion for Identified Federal Regulatory Conflicts
And 18980.2.4 Exemptions for Certain Covered Materials due to Unique Compliance Challenges or Health and Safety Concerns

Recommendations
<u>Comment 1:</u> Ideally 18980.2(a)(2) should be deleted entirely, leaving producers the opportunity to petition the PRO to pursue an exemption under 18980.2.4 due to unique compliance challenges, for health and safety reasons, or because it is unsafe to recycle certain covered materials. This is how this issue was handled in the prior formal rulemaking. The process for evaluating limited exemptions under Section 18980.2.4 appears ideally suited since it already covers packaging health and safety or SB 54 unique compliance concerns. Most importantly, Section 18980.2.4, unlike 18980.2(a)(2) ensures that producers and covered materials will comply to the maximum extent possible, since it states, "*The exemption does not affect the status of*

the single-use packaging or single-use plastic food service ware as covered material and does not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees."

Comment 2: If CalRecycle does not delete and retains the current approach in 18980.2(a)(2), then we recommend: a. Exclusions should last only 2-3 years and then require resubmittal and updating. Recycling systems may be improved to the point that the excluded packaging can satisfy both SB 54 and federal requirements. b. Only SB 54 producers should be allowed to submit exclusions, not all "entities" as in draft regulations. c. CalRecycle should be required (or at least authorized) to make a rapid review and ruling on submissions based on completeness and adequacy that could lead to immediate rejection of the claimed exclusion. d. There should be an annual deadline for submissions to take effect in the following plan implementation year. For the initial plan year, the deadline should be within 30 days of regulations being adopted. e. Although food safety packaging design is outside of our organization's core expertise, CalRecycle should seek to identify a more objectively measurable standard beyond "not reasonably possible to use other packaging." Following are example edits that would execute the above recommendations

18980.2(a) The following are not covered material:

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

(A) ~~Any entity~~ A producer that has determined that packaging is not covered material pursuant to paragraph (2) of subdivision (a) shall notify the Department and the PRO and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination. The term "producer" includes a person that would be a producer pursuant to subdivision (w) of section 42041 of packaging and food service ware items if they were not categorically excluded. The basis shall identify the specific provision of this Chapter that causes a conflict, cite the conflicting federal regulations, rules, or guidelines, and explain why no reasonably possible alternative packaging or packaging component is available. The Department shall maintain on its website a publicly available electronic database of each such determination that includes the entity name, the specification for the packaging and the associated product(s), and the status of any review by the Department of such determination. For the exclusion to be effective in the initial PRO plan implementation year, notification documentation must be received by CalRecycle and the PRO within 30 days of the effective date of this chapter. In future years, notifications received by March 1 of each calendar year are eligible to take effect in the next implementation plan implementation calendar year.

(B) Within one year of receiving a submission pursuant to paragraph (A), CalRecycle shall review and issue a determination either concurring with or rejecting any claimed exclusion. A determination shall remain effective for three years from the day CalRecycle receives the submission, and updated documentation must be submitted prior to the expiration providing a basis for continued exclusion. If CalRecycle determines that a submission pursuant to paragraph (A) is incomplete or insufficient and informs the producer within 60 days of receiving it, then the identified packaging or packaging components shall immediately be considered covered material. At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days. If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity, which shall respond within 60 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Department shall determine whether the packaging or packaging component qualifies for the exclusion. If the Department determines that the packaging or packaging component does not qualify for the exclusion, then it shall be considered covered material 180 days following the Department's decision.

Comment 3: As a variation of Comment 1, CalRecycle could delete the current provision in 18980.2(a)(2) and also add language to Section 18980.2.4 to explicitly allow exemption requests for identified federal regulatory conflicts. To provide flexibility where disagreements with the PRO arise, producers could be allowed to directly submit such requests to CalRecycle if the PRO declines to do so. Example suggested edits:

Add to 18980.2.4(c)(4)(F): …*An application may request an exemption pursuant to paragraphs (3) or (4) of subdivision (a) of section 42060 of the Public Resources Code due to a conflict between SB 54 regulations and specified federal regulations pursuant to paragraph (1) and (2) of subdivision (b) or subdivision (d) of section 42060 of the Public Resources Code.*

Section 18980.2.4(a) *Except as provided under paragraph 1 below, only a PRO or an Independent Producer may submit a request for an exemption pursuant to paragraph (3) of subdivision (a) of section 42060 or paragraph (4) of subdivision (a) of section 42060 of the Public Resources Code. The effect of such an exemption is that exempted covered material may be sold, offered for sale, imported, or distributed regardless of whether the covered material complies with section 42050 or subdivision (i) of section 42057 of the Public Resources Code. The exemption does not affect the status of the single-use packaging or single-use plastic food service ware as covered material and does not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees.*

(1) A producer may independently submit a request for an exemption pursuant to this subdivision if they determine there is a conflict with a specified federal regulation as described under paragraphs (1) and (2) of subdivision (b) and with subdivision (d) of section 42060 of the Public Resources Code and if the PRO does not inform the

producer of its intent to submit the application within 60 days of receiving a petition from the producer providing sufficient rationale to justify the exemption.

Response to O-104-4

Comment partially rejected and partially accepted. For the reasons provided in response to comments I-59-2, I-19-1, and O-93-9, CalRecycle rejects the suggestion to remove 18980.2(a)(2) in its entirety and the suggestion to rely on the exemptions described in section 18980.2.4 instead. Regarding the proposed changes to subparagraph (A), CalRecycle declines to make those changes for the reasons stated in its response to comment O-96-5, which suggested substantially similar revisions.

Regarding the suggested additions imposing a time limitation on exclusions pursuant to 18980.2(a)(2), CalRecycle rejects the comment for the reasons provided in response to comment I-59-2. Moreover, the proposed effective period of three years would unnecessarily impede CalRecycle's ability to identify unmeritorious exclusion claims and deem them no longer effective within a shorter timeframe.

Regarding the suggestion to require CalRecycle's concurrence or rejection of a claimed exclusion within one year, CalRecycle rejects that suggestion because it could not be implemented fairly and would contradict the other procedures established in subparagraph (B) (subparagraph (E) in the updated proposed regulations), which the commenter does not propose changing. The process the commenter outlines would require CalRecycle's "determination" to be retroactive to the submission date. That would result in up to one year during which the affected business would be unable to assess its compliance status. And, if CalRecycle initiates the process for obtaining additional information, that process might not conclude within the one-year period the commenter proposes for CalRecycle's ultimate determination. The commenter does not explain how CalRecycle would resolve that inconsistency. Instead, the proposed regulation maximizes CalRecycle's ability to determine how to most efficiently administer the Act: CalRecycle will review each submission, ensure it contains the required elements, and determine on a case-by-case basis whether and when to require additional information justifying the exclusion. The benefit of an initial one-year period would often be illusory because the process for requiring additional justification could be concluded within one year of the submission. Regarding the suggestion that "only SB 54 producers should be allowed to submit exclusions," the commenter addresses a merely semantic issue: If packaging is not considered "covered material," there is no "producer" of it. So, any entity making a submission pursuant to section 18980.2(a)(2) would be effectively claiming not to be a producer. The suggested change would only render the proposed regulation less clear.

The commenter also suggests that exemptions pursuant to section 18980.2.4 should be used in lieu of the exclusion described in 18980.2(a)(2). CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2.

Although CalRecycle declines to make the specific changes the commenter recommends, CalRecycle accepts the comment to the extent it raises concerns over the scope and effect of 18980.2(a)(2) and has revised it accordingly. The changes address the request for a "more objectively measurable standard" by adding criteria for evaluating whether it is "not reasonably possible" to use other packaging. The changes also add procedures, including an initial review and potential immediate rejection by CalRecycle, for ensuring that deficient submissions do not result in unjustified exclusions being considered valid. More generally, CalRecycle accepts this comment to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-104-5

Concern 2: A viable pathway to be designated recyclable via alternative collection programs alone or in combination with local jurisdiction programs is needed. Current regulations are unclear on this and some related recyclability designation issues.

SB 54 states:
PRC 42051.1(k) Consistent with subdivision (l), as part of the plan, ***the PRO or a participant producer may rely on a range of means to collect and recycle or compost various categories of covered materials*** *that are not collected and recycled or composted through a curbside collection program or other local collection program, including, but not limited to, dropoff recycling services and retailer takeback.*

However, regulations do not appear to offer a viable compliance pathway for being designated recyclable based on alternative collection programs alone or in combination with limited curbside collection. This is because we believe the 75 percent recovery rate required by PRC 42355.51(d)(5)(B), an SB 343 recyclable criterion focused on progress in non-curbside collection programs, is objectively infeasible to achieve solely through alternative collection. And draft regulations appear to exclude local jurisdiction programs from contributing towards a separate recyclable criterion in PRC 42355.51(d)(4), even though that provision does not specify any particular type of program. This criterion also includes an unusually defined 75 percent recycling rate that needs clarification in regulations. This, alongside one final SB 343 pathway allowing temporary recyclable designations conditioned on compliance with SB 54 and taking steps to secure a

determination by the CalRecycle director that such designation will not increase curbside contamination or deceive consumers regarding recyclability.

We believe that optimizing recycling systems for difficult-to-recycle covered materials like film and flexible packaging requires a dynamic, flexible approach involving shifts to refillable, reusable or more readily recyclable designs (such as mono-PE resins) where feasible, in addition to experimentation with innovative alternative collection systems and variations on established local collection programs. Some potential model programs, for example, may leverage existing local infrastructure and contracts while keeping problematic materials out of existing MRF flows. Clarification of when such programs are considered local versus alternative is needed. The ultimate goal is to demonstrate models that are
feasible, sufficiently cost effective and that can be broadly embraced by local jurisdictions and recycling service providers.

Regulations Section and Topic
18980.3(e) Need to clarify that PRO funding can be used to satisfy the sufficient commercial value standard in PRC 42355.519d)(5)

Recommendations
The following new sub-paragraph is needed to clarify how the PRO can support achieving recyclability criteria under the SB 54 EPR program:

18980.3(e) For purposes of paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code:

…(5) The requirement that "the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form" may be satisfied by actions, investments or funding provided by the PRO as part of an approved PRO Plan.

18980.3(f) Standards for Evaluating Recyclability Pursuant to PRC 42355.51(d)(4)

Comment 1: The following provision within SB 343 defines a pathway for specified covered materials to be designated recyclable under SB 54 pursuant to PRC 42061(c):

PRC 42355.51(d)(4) Notwithstanding paragraphs (2) and (3), a product or packaging is recyclable in the state if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.

In the draft regulations under 18980.3(f), the following standard pertains to this provision:

18980.3(f)(1) …The "product or packaging in the program" encompasses all the covered material items sold or distributed in the state that are eligible for recovery by the program.

This standard also applies to the separate recyclable criterion under PRC 42355.51(d)(5), which makes sense to us since that criterion applies specifically to *products and packaging not collected pursuant to a curbside collection program*.

However, this standard requires clarification regarding its applicability to PRC 42355.51(d)(4) since this
criterion does not reference any type of specific program. This is important because we interpret this statutoryprovision to allow for being designated recyclable based on improvements in a combination of alternative and curbside collection infrastructure.

We recommend that CalRecycle revise draft regulations to clarify this through the following edits or similar: *189890.3(f)(1) Participant producers shall demonstrate to their PRO how the covered materials meet the requirements of paragraphs (4) or (5) of subdivision (d) of section 42355.51 of the Public Resources Code. The "product or packaging in the program" encompasses all the covered material items sold or distributed in the state that are eligible for recovery by the program. For the purposes of applying this requirement to paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code, "program" means any type of collection and recycling program, including alternative collection and local jurisdiction collection.*

Comment 2: Draft regulations clarify how the PRO is to evaluate the recovery rate standard in PRC 42355.51(d)(5). But regulations do not address how to evaluate the very unusual definition of recycling rate within PRC 42355.51(d)(4). As written in statute it could be interpreted to mean, effectively, a post-MRF yield rate without a specified minimum level of recovery. The following addition to draft regulations could clarify this and impose a higher bar consistent with SB 54 statutory requirements:

18980.3(g) For the purposes of evaluating whether covered materials satisfy paragraph (4) of subdivision (d) of section 42355.51 of the Public Resources Code and are therefore recyclable: the weight of the "product or packaging sorted and aggregated in the state" must equal at least the amount needed to satisfy the currently applicable recycling rate pursuant to PRC 42050(c) as determined by the PRO in an approved annual report, PRO Plan or amendment.

Section 18980.3. Recyclability - Need to clarify PRC 42355.51(d)(6) Recyclable Based on Compliance with a Legislated Program

Draft regulations cite the following recyclable criterion as one of three exclusions to the local jurisdiction criteria in PRC 42355.51(d)(2) and (3), that can qualify covered materials to be designated recyclable: *PRC 42355.51(d)(6) Notwithstanding paragraphs (2) and (3), a product or packaging is recyclable in the state if the product or packaging is 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 if 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. For the other two exclusions discussed in the prior comments (i.e., PRC 42355.51(d((4) and (5)) the PRO is assigned responsibility to evaluate and propose designations for CalRecycle review. But draft regulations are silent on whether and how the PRO or a producer may request recyclable designation under PRC 42355.51(d)(6).

We believe this is needed and that this provision authorizes CalRecycle to provide the opportunity for producers or the PRO to pursue a strategy of being temporarily designated as recyclable based on a trend in alternative and/or local jurisdiction programs that can achieve any of the SB 343 recyclable criteria (i.e., not just the local jurisdiction criteria as the process currently described in 18980.3.1 is limited to). To do this, we recommend adding a new subdivision similar to the following:

18980.3(g) A PRO or an independent producer may submit a request to CalRecycle requesting a recyclable designation pursuant to PRC 42355.51(d)(6). The request must include:
(1) A justification for the designation that demonstrates that collection, sortation and availability of responsible end markets for the identified covered materials are advancing with a reasonable likelihood of satisfying any of the recyclable criteria pursuant to PRC 42355.51 within a time period specified within the request.
(2) A description of specific investments and actions in an approved PRO Plan or pending Plan amendment that the PRO and member producers will take to ensure that designating the materials as recyclable will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging. Such steps may include, but are not limited to:
(i) A description of standards for any recyclable marketing claims that will be used on the targeted covered materials, and how consumers will be informed about how to recycle them in their community.
(ii) Investments and improvements at specific recycling system facilities and programs that will mitigate contamination and/or be used to demonstrate successful models.

Section 18980.3. Recyclability - Need to clarify definition of local jurisdiction program

We request that CalRecycle add the following subdivision or similar to clarify when a PRO-supported collection and recycling program can “count” towards satisfying the recyclable criteria in PRC 42355.51(d)(2):

18980.3(h) For the purpose of evaluating whether a covered material category satisfies the recyclable criteria in PRC 42355.51(d)(2), any type of collection or recycling service that is contracted by a local government is applicable. This includes, but is not limited to:
(i) Collection programs operated under a license or non-exclusive or non-franchise contract with a local jurisdiction.

(ii) Subject to satisfying the restrictions on local interference pursuant to PRC 42051.1(c)(3), a contract between the PRO and a local jurisdiction or their contracted recycling service provider that includes terms, compensation, specific service roles or operational activities related to the collection program, in support of satisfying SB 54 requirements.

Response to O-104-5

Comment rejected. Regarding the proposed change to 18980.3(e), no change is necessary because the proposed regulations impose no limitation on what actions the PRO may take to support achievement of the recyclability requirements, nor is there any reason to impose limitations. The addition would suggest that the PRO is subject to limitation; it is not clear whether the commenter intended for its proposal to create such an implied limitation. Moreover, to the extent the commenter intended its proposal to be an interpretation of the statutory text cited (from Public Resources Code section 42355.51(d)(5)), that interpretation is unnecessary because the statutory text is plain on its face; it clearly means that being "marketed for recycling and transported" for sorting and aggregation is sufficient.

Regarding the proposed change to 18980.3(f)(1), no change is necessary because the regulation is clear Public Resources Code section 42355.51(d)(5) unambiguously establishes that the commenter's interpretation is wrong. That provision is directed solely at recovery by a "non-curbside collection program." The proposed regulations make clear that CalRecycle interprets that term to refer to any program not operated by a local jurisdiction or a recycling service provider operating under contract with one.

Regarding the first proposed change referred to as "18980.3(g)," no change is required concerning "recycling rate." PRC section 42355.51(d)(4) requires calculating a percentage that it refers to as "recycling rate," and that percentage is fundamentally different on its face than the percentage referred to in SB 54 by the same term. In each context, the specific label ("recycling rate") used is not the predominant factor in statutory interpretation; rather, the language in the statues themselves establish the label's meaning in each context, and section 42355.51(d)(4) contains its own, express definition for the label. Accordingly, for purposes of PRC section 42355.51(d)(4), "recycling rate" has a fundamentally different meaning than it does in PRC section 42041(ab). Moreover, CalRecycle rejects the assertion that multiple readings of the former provision are possible. Rather, section 42355.51(d)(4) uses plain, unambiguous language that is not subject to multiple interpretations: The relevant percentage is of the total amount of a product or packaging actually sorted and aggregated in the state. Accordingly, no clarifying regulation is necessary.

Regarding the second proposed change referred to as "18980.3(g)," no change is appropriate. First, the commenter states that the proposed regulations refer to Public Resources Code section 42355.51(d)(6). There is no such reference and, in any event, the proposed regulatory text, on its face, has no relevance to that statutory provision, which provides that a separate program under federal or state law may be the basis for compliance with the labeling restrictions of

42355.51. The commenter does not explain how the proposed text would be an application of 42355.51(d)(6), nor can that provision possibly refer to compliance with the current statute's restrictions because such an interpretation would be circular: Section 42061(a)(3)(B) itself refers to a "program described in [42355.51(d)(6)]," so the Legislature could not have intended the current statute itself to be such a program.

Second, to the extent the commenter intended a "recyclable designation pursuant to Public Resources Code 42355.51(d)(6)" to be a finding that covered material can be labeled "recyclable," such a finding is plainly beyond CalRecycle's authority to begin with. The only authority granted to CalRecycle with respect to labeling restrictions is pursuant to the "trending" provision in 42061(a)(3)(B), which only concerns trends toward compliance with 42355.51(d)(2), not (d)(6). Under that provision, a "trending" determination would constitute a determination that covered material could be labeled "recyclable." But statute also provides that that determination would become irrelevant when 42355.51(d)(6) could provide justification for a recyclability designation. Morely, no other provision of the statute purports to give CalRecycle authority to make assessments of whether labeling would be deceptive, and CalRecycle has no enforcement authority with respect to labeling deceptiveness under 42355.51, whether pursuant to 42355.51(d)(6) or otherwise.

Lastly, the commenter's proposal rests on an unexplained statutory interpretation that is unsupportable. The commenter proposes that recyclability can be achieved based on a "reasonable likelihood of satisfying" statutory requirements for that status. There is no statutory authority for that approach, and the commenter cites none, and it would render the "trending" provision of Public Resources Code section 42061(a)(3)(B) superfluous. Statutory interpretations that would assert authority not provided by the statute or that render portions of statute superfluous are inappropriate. Moreover, the statute and the proposed regulations (Public Resources Code section 42060(a)(3) and section 18980.2.4(c) of the proposed regulations) already provide for a time-limited exemption for covered materials that face challenges for immediate compliance but have demonstrable phase-in pathway: Public Resources Code section 42060.

Regarding the final proposal to add 18980.3(h), no change is appropriate because Public Resources Code section 42355.51(d)(2) is plain on its face: It concerns "recycling programs for jurisdictions" and "recycling programs statewide." Moreover, application of that provision is governed by the reports that CalRecycle publishes pursuant to 42355.51(d)(1), which are not subject to formal rulemaking requirements. Accordingly, the application of 42355.51(d)(2) in those publications control in the context of recyclability determinations under section 42050(b).

Comment O-104-6

Concern 3: Current draft regulations in Section 18980.4 establish an effective zero tolerance policy on responsible end market verification that may unnecessarily cause further delays and compromise progress.

This may be obviated by the third-party certification protocol that Circular Action Alliance is developing in response to Oregon's responsible end markets (REMs) requirements, if approved by Oregon's Department of Environmental Quality as a part of the PRO's current program plan amendment and adjusted to meet SB 54's own mandates. Looking at SB 54, statute requires that, *"To be considered recycled, covered material shall be sent to a responsible end market (PRC 42041(aa)(3))."* The concept of REMs validated by the PRO to meet required standards is an important new innovation in EPR policy that addresses concerns over transparency, actual recycling yields and health and safety related issues. However, experience implementing REM requirements under the Oregon EPR law shows that validation may be quite challenging in some cases, especially regarding the overseas export markets that California has long relied upon for many recycled commodities. We are concerned that SB 54 draft regulations provide no leeway at all for even minor, temporary discrepancies in validating REMs, and that even temporary market disruptions could result in loss of REM status and/or a proliferation of two-year local exemptions from the requirement to include designated CMCs in local programs. Following are our recommendations to address these concerns.

Recommendations to Address Concern #3 Related to Responsible End Markets

Regulations Section and Topic

18980.4.2(d) End Market Compliance Audits and Verification – Conditional Approvals

Recommendations

There may be occasional gaps in REM verification documentation, especially for the initial verification process in which facilities operators must accept and integrate the new requirements into their operations. These issues could potentially lead to not counting materials as recycled and/or the proliferation of local jurisdictions receiving two-year extensions under the new explicit exemption provision in 18980.11(b), even if the discrepancies are minor or are resolved within a much shorter time frame. To provide a degree of flexibility and avoid unnecessary disruptions in SB 54 implementation and continuity in covered materials collected by local jurisdictions, we recommend that language similar to the following paragraph be added to draft regulations:

18980.4.2(f) Notwithstanding the verification standards in subdivision (c) and the disqualification of responsible end markets for any discrepancy as described in subdivision (e), the PRO or an Independent Producer may submit a request to CalRecycle to conditionally approve facilities that may have minor deviations, discrepancies or technical violations from the required verification standards or facility permit conditions that do not result in, or are not reasonably likely to lead to, actual environmental harm or harm to public health. Such requests must be submitted simultaneously to CalRecycle and to the Advisory Board for review and possible comment. CalRecycle shall determine within 60 days whether to conditionally waive certain verification standards and thereby allow the facility to be considered a responsible end market under this Chapter for a specified period of time to be determined by CalRecycle. Such a determination may be made retroactively to cover any period specified in the request if justified.

Note that in the above recommended text, we have adapted the conditional flexibility language currently applied to non-mechanical recycling technologies under 18980.4.1(d)(1)(B). We believe standards for mechanical recycling technologies serving as a REM should not be more stringent than for new, nonmechanical technologies.

18980.11(b) Local Jurisdiction Exemptions Due to the Absence of a REM

In addition to occasional gaps or delays in REM verification, there may be occasional disruptions to market demand, quality standards and/or pricing due to the inherent volatility of commodity markets. Local jurisdictions and recycling service providers may seek an exemption to collect certain designated covered materials by asserting that they amount to the absence of a responsible end market pursuant to 18980.11(b). While this may be merited in some cases, we are concerned that as currently written this subdivision grants an automatic two-year exemption, even if the disruption is temporary and of a very limited duration, and even if the PRO is able to mitigate the short-term disruption, for example, through added price support, a request for a conditional waiver as we recommend allowing in the prior comment, or temporary warehousing until demand improves.

We recommend revisions such as the following to address this concern:

18980.11(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets ~~shall~~ may be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter. Notwithstanding subdivision (b) of Section 18980.11.1, an exemption to the requirement for local programs to include designated covered material due to the absence of a responsible end market may be granted for a period of less than two years if CalRecycle determines, with input from the Advisory Board, that the absence is due to temporary market or other disruptions that may be resolved in a shorter timeframe. In considering the length of any such exemption, CalRecycle shall identify the shortest duration for the exemption practical given the conditions and expected resolution and may extend the extension if the disruptions causing the absence are not addressed when expected.

18980.4.3(a)(3) REM Standards Related to Further Processing of Residuals

We are concerned that some market facilities, even if they satisfy most or all of the REM standards, may view the rigorous verification process as too burdensome to merit participating in. While we support the overall framework and intent of the standards, we recommend the following revisions that would provide flexibility to the REM operator in determining when it is feasible to send residual covered materials to another processor or recycler:

18980.4(a)(3) The entity shall minimize the discharge of emissions, effluents, and materials produced by the entity, including feedstocks and residuals, and shall handle incompatible materials in the following manner:

(A) For incompatible materials that the entity determines can be further processed and recycled, the entity sends materials to entities that are authorized to further process and recycle the material. (B) For incompatible materials that the entity determines cannot be

further processed and recycled, the entity disposes of the material in a way that minimizes significant effects on the environment and risks to public health and safety.

Response to O-104-6

CalRecycle rejects this comment. The proposed regulations are consistent with the relevant statutory requirements, including in PRC sections 42041(ad), 42051.1, and 42060, and the recommended change is not necessary to the implementation or enforcement of the Act.

To the extent this comment recommends including section 18980.4.2(f) of the proposed regulations to allow for conditional approvals of responsible end markets that do not satisfy all of the requirements of section 18980.4(a), no change is necessary or appropriate. PRC section 42041(aa) provides that, to constitute recycling under the Act, covered material must be sent to a responsible end market. PRC section 42041(ad) defines a responsible end market as a materials market in which the recycling of materials is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. PRC section 42041(ad) further authorizes CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety. Section 18980.4(a) of the proposed regulations implements these statutory provisions by setting forth the criteria that must be satisfied for an end market to be considered a responsible end market under the Act. Section 18980.4(a)—and the uniform application of its criteria to facilities seeking to be considered responsible end markets—is necessary to provide regulated parties with clear guidance and to ensure consistency and certainty in the implementation and enforcement of the Act. If CalRecycle determines that an end market does not meet all of the criteria established in section 18980.4(a), then that end market necessarily cannot be considered a responsible end market under PRC section 42041(ad). If that end market is not a responsible end market, then covered materials sent to it necessarily cannot be considered recycled under PRC section 42041(aa)(3). The Act thus does not leave discretion for CalRecycle to conditionally approve end markets that do not satisfy the criteria to be considered responsible, and the assertion of this authority in section 18980.4.2(f) of the proposed regulations would only create additional and unnecessary confusion. No change is necessary.

To the extent this comment recommends revising section 18980.11(b) of the proposed regulations, no change is necessary. PRC section 42060.5(b) requires CalRecycle to grant an extension of, or exemption from, the collection requirement of PRC section 42060.5(a) upon a written showing that compliance is not practicable because of specific local conditions, circumstances, or challenges. Therefore, CalRecycle has no discretion to deny such extension or exemption upon a written showing of an absence of responsible end markets, and the proposed revision from "shall" to "may" is not appropriate or necessary. Additionally, the proposed language allowing CalRecycle to grant an extension

or exemption for less than two years is not necessary because section 18980.11.1(g) already requires CalRecycle to repeal any extension or exemption upon a determination that the conditions, circumstances, or challenges no longer render compliance impracticable as described in the application. Therefore, once a responsible end market becomes established, the extension or exemption will be subject to repeal and no language allowing for a shorter timeframe is necessary.

Finally, to the extent this comment recommends revising the language of proposed section 18980.4(a)(3), no change is necessary. The current language strikes an appropriate balance between advancing the goals of the Act and preserving adequate flexibility for responsible end markets to dispose of incompatible materials that cannot be further processed and recycled. See the response to comment O-55-4.

Comment O-104-7

Concern 4: Further clarification of the requirement for local programs to include recyclable or compostable CMCs is needed.

We have concerns or are unclear about some issues related to the local program requirement to include designated CMCs, as described below.

Recommendations to Address Concern 4 Related to Local Program Requirements

Regulations Section and Topic

18980.11(c) Deadline for Local Programs to Add Newly

Comments and Recommendations

We support the current language in this subdivision requiring local programs to add a CMC newly added to the
SB 54 recyclable list pursuant to PRC 42060.5(a) within one year of CalRecycle publishing the list change, even
if the effective date is later than the published date.

Designated Recyclable or Compostable CMCs

However, we recommend that CalRecycle not designate CMCs as recyclable with a future effective date. If a
CMC or other grouping of covered materials has met the criteria for designation, then the designation should
be immediate.

18980.11 Local Requirement to Include Covered Materials Designated as Recyclable or Compostable on the CMC List
Pursuant to PRC 42061(c) and (d)

Comment 1: Regulations should be more specific about when a local program must include a designated CMC
specifically in a curbside collection program (i.e., that picks up materials from residences and commercial
businesses) versus drop-off or other types of collection programs. Specifically, this should be required if the
currently approved PRO Plan demonstrates that any of the criteria under PRC 42051.1(l) are satisfied, including

the first criterion under paragraph *(A), The category of covered materials can be made suitable for curbside collection and can be effectively sorted by the facilities receiving the curbside collected material for recycling or composting.* We suggest the following edits:

18980.11(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities. The local program must include the CMC specifically in an existing curbside program that picks up materials from residences and commercial businesses if the currently approved PRO Plan has demonstrated that the covered material meets any of the criteria pursuant to PRC 42051.1(l). Notwithstanding this, pursuant to PRC 42060.5(a) this provision does not require mandatory route collection service where it does not already exist. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

Comment 2: We support the second part of subdivision 18980.11(b) above that states local programs are not required to establish the availability of a REM. However, we are concerned that even relatively minor, shortterm disruptions in either demand by a given REM or in the validation status of a given REM could result in two-year exemptions from the mandate to include materials in local jurisdiction collection lists. This could unnecessarily delay producer efforts to achieve SB 54 requirements and add to consumer confusion by triggering changes in acceptance lists. This may be especially true upon program launch in early 2027 when the PRO may still be working to validate new REM markets. We offer a recommended approach to remedy this via revisions to 18980.11(b) under Concern 3 above.

Response to O-104-7

Comment rejected. Regarding the suggestion that CalRecycle not designate CMCs as recyclable with a future effective date, CalRecycle declines to make any revisions to the current language. The proposed regulations are consistent with the requirements set forth in the Act, including those in sections 42060 and 42061 of the Public Resources Code, and the recommended change is not necessary for implementation or enforcement of the Act. Section 42061(e) requires CalRecycle to determine a process for updating the CMC list annually (until January 1, 2032) by either adding or removing covered material categories based on whether they meet all the criteria in either section 42061(c) or (d). Therefore, so long as the lists are updated annually, the Act provides CalRecycle with the necessary discretion to determine the appropriate process for making such updates, including the possibility of publishing an update before it becomes effective. Moreover, publishing a new CMC list with a future effective date may be necessary for purely administrative reasons because CalRecycle may not be able to update internal processes and external resources as soon as it determines how to update the CMC list. That outcome would impose an artificial constraint, the only effect of which would be to prevent the public from learning about crucial changes in their obligations as early as possible.

Regarding comment 1, CalRecycle declines to make the proposed change because it would merely recapitulate the statutory provision at issue (Public Resources Code section 42051.1(l)). Moreover, Public Resources Code section 42060.5(a) already establishes that local jurisdictions' and recycling service providers' obligation is to include "all covered material contained on the [CMC list] pursuant to [Public Resources Code section 42061(c) and (d)." That text provides a clear resolution to the issue raised in this comment: Compliance with the statutory obligation requires collection and recycling programs that divert all discarded covered material from disposal.
Regarding comment 2, no change is appropriate because the proposed regulations already prevent exemptions under Public Resources Code section 42060.5(b) from persisting based on ephemeral impracticability: Under section 18980.11.1(g), CalRecycle must deem an exemption no longer in effect when it determines that the impracticability underlying approval of the exemption no longer applies. Moreover, the application process required under section 18980.11.1 may require up to 90 days before an application is submitted, rendering applications based on short-term conditions unlikely.

Comment O-104-8

Concern 5: Revisions to certain other exclusions and exemptions are needed to clarify timing, avoid unintended consequences and minimize disruption to PRO plan implementation.

We appreciate CalRecycle’s clarification in past revisions to the exclusions and extensions in Article 2. Beyond our comments on the federal exclusion in 18980.2(a)(2) described above under Concern 1, we offer the following recommendations on some remaining related concerns.

Recommendations to Address Concern 5 Related to Select Exclusions and Exemptions

Regulations Section and Topic

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

Comments and Recommendations

Comment 1: To facilitate CalRecycle validation of assertions related to reuse and refill, we recommend that CalRecycle replace the previously deleted provision requiring producers to maintain documentation of reusable and refillable packaging design and performance. At minimum, this requirement should apply to packaging shifts made since the effective date of the law, January 1, 2023, and that the producer or the PRO seek to count towards the industry-wide source reduction rate targets in PRC 42050(b).

18980.2.1(b)(2) Producers, as defined for purposes of this subdivision, or a PRO acting on producers' behalf, shall maintain records sufficient to demonstrate that packaging or food service ware claimed to be reusable or refillable satisfies the applicable requirements pursuant to this subdivision and subdivision (af) of section 42041 of the Public Resources Code. Producers and the PRO shall provide such records to the Department upon request.

(A) The demand for such evidence need not be limited with respect to locations or regions where the Department has alleged packaging or food service ware that is not reusable or refillable has been sold, offered for sale, or distributed.

(B) All packaging or food service ware that records provided to the Department fail to demonstrate to be reusable or refillable shall be deemed covered material.

Comment 2: While we support and appreciate the exclusion of reusable and refillable packaging from certain requirements to incentivize participation in reuse/refill systems, we recommend including requirements to maximize the recyclability at end-of-life. Otherwise, this exclusion may inadvertently lead to increased use of non-recyclable plastic. One approach is to add the following provision:

18980.2.1(a)(3)(C) For any single use packaging or plastic food service ware that is shifted to reusable or recyclable formats after January 1, 2023 to count towards the source reduction goals pursuant to PRC 42050(a) and 42057, the producer or the PRO must include in its plan pursuant to PRC 42051.1 development

of adequate infrastructure to ensure consumers may recycle the reusable or refillable packaging at the end
of its useful life. Pursuant to PRC 42041(ai) the Plan must demonstrate that the reusable or refillable
packaging or food service ware is at least as recyclable as the single use counterparts it replaced.

Response to O-104-8

CalRecycle rejects this comment. With respect to the change labeled "Comment 1," that proposed change is unnecessary because, as a practical and legal matter, persons that CalRecycle alleges to be "producers" because their items allegedly do not satisfy the criteria in Public Resources Code section 42041(af) must be able to rebut those allegations with evidence. Regarding the change labeled "Comment 2," which proposes a recyclability requirement for reusability. Such a proposal would be a new, independent criteria for reusability not found in 42041(af). The statute does not authorize CalRecycle to impose additional criteria. The proposed additional criterion would also contradict the obvious difference between how the statute treats reusable items and how it treats "covered material": Statute expressly subjects the latter, and not the former, to a recyclability (or compostability) requirement. To interpret the statute as impliedly authorizing a requirement for certain items while expressly creating that same requirement for other items would offend basic principles of statutory interpretation.

Comment O-104-9

Regulations Section and Topic

18980.2.2(b) De Minimis Exemptions

Comments and Recommendations

Comment 1: We generally support this provision as written, especially allowing the PRO to submit de minimis proposals for CalRecycle consideration ahead of the PRO Plan. However, we recommend CalRecycle add an additional criterion under (b)(2) similar to the following, to guard against a situation where multiple de minimis exemptions leads to increased contamination in recycling and/or composting streams without prior system improvements to accommodate such materials.

18980.2.2(b)(2)(G) The cumulative effect of all approved de minimis exemptions will not lead to significant increased contamination of recycled materials of organic materials or impact the ability of covered materials to satisfy responsible end market quality standards.

Comment 2: CalRecycle staff have stated that the de minimis exemption does not apply to plastic food service ware because it appears in the definition of packaging under PRC 42041(s) even though food service ware is explicitly mentioned. Based on the statutory reference to food service ware we would support extending the de minimis exemption to food service ware. However, at minimum regulations should clarify this through a revision such as the following:

18980.2.2(b)(2) A component or group of components is of de minimis weight or volume if it satisfies the following requirements:
…(G) It is not plastic food service ware pursuant to PRC 42041(a)(8).

Comment 3: Since most food service ware has some amount of plastic or polymer, however small, and since it is not eligible for a de minimis exemption, it appears that most all food service ware will now be deemed plastic food service ware and therefore be covered material subject to SB 54 requirements. We request that CalRecycle clarify this either in regulations or a separate written guidance document.

Response to O-104-9

CalRecycle rejects this comment. With respect to the proposed change labeled "Comment 1," that proposed change is unnecessary because the proposed regulations already inherently account for the outcome sought (preventing determinations that components have de minimis weight or volume from contaminating the waste stream and or affect the ability of end markets to be responsible end markets). The proposed regulation does not limit the evaluation of items to a single instantiation of the components. If the components at issue, when considered de minimis, have the negative cumulative effect described by the commenter, they will likely fail, at a minimum, the criteria of 18980.2.2(b)(2)(B) and (C).
Regarding the proposed change labeled "Comment 2," that change is unnecessary because 18980.2.2(b) expressly states that it only concerns packaging.
Regarding the proposed change labeled "Comment 3," no change is appropriate because the definition of "plastic" already makes clear that food service ware that contains any amount of plastic is "plastic food service ware." Moreover, no regulation is necessary for CalRecycle to publish an explanation that the statute and regulations require that conclusion.

Comment O-104-10

Regulations Section and Topic
Section 18980.2.3. Exemptions for Specific Material with Demonstrated Recycling Rates

Comments and Recommendations
To minimize disruption, timing requirements should be placed on the submission of applications for this exemption, similar to our suggestions for the federal conflict exclusion under 18980.2(a)(2) above. This could be done through the following edits:
18980.2.3(b) The person seeking the exemption shall electronically submit an application to the Department and to the PRO, which may provide comments for CalRecycle's consideration. For the exemption to be effective in the initial PRO plan implementation year, the application must be submitted within 30 days of the effective date of this chapter and be approved by CalRecycle within 60 days. In future years, notifications received by March 1 of each calendar year, if approved by CalRecycle by May 1, are eligible to take effect in the next calendar plan implementation year. The

Department shall grant the exemption if the application establishes that the packaging or food service ware items satisfy each criterion in subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code. The application shall include, but not necessarily be limited to the following:

Response to O-104-10

CalRecycle rejects this comment. The statute unambiguously excludes items from the definition of "covered material" if they satisfy the criteria set forth, and those criteria are tied to specific years, with no implication that the exclusion can be delayed. The commenter's proposed time limitations are also arbitrary, and the commenter provides no justification for why they should be imposed. Lastly, nothing in the proposed regulations prevents CalRecycle from soliciting comments from the PRO on an application.

Comment O-104-11

Regulations Section and Topic

18980.2.4 Exemptions for Certain Covered Materials due to Unique Compliance Challenges, Health and Safety or Unsafe to Recycle Concerns

Comments and Recommendations

We support the current drafting of Section 2.4 that defines an evaluation process designed to maximize progress to the extent possible by all producers and covered materials under SB 54 while allowing CalRecycle to balance this goal with other pertinent considerations. However, we think guidance documents are needed as soon as possible to clarify expectations for the timing, process, and how CalRecycle will conduct authorized investigations, enforcement and consideration of unique challenge exemptions under 18980.2.4, especially after evaluation of the initial recycling rate target in 2028.

Response to O-104-11

Comment rejected. The commenter does not propose revisions to the regulations. Rather, the commenter endorses the proposed regulation but requests separate "guidance documents" concerning CalRecycle's investigations, enforcement, and consideration of exemptions. Accordingly, no response is required.

Comment O-104-12

Concern 6: CalRecycle should anticipate broad non-attainment of initial SB 54 performance targets and take actions to accelerate momentum towards goals and beneficial outcomes.

We believe it is objectively inevitable that most, if not all, CMCs will not attain the initial recycling rate targets, if not the final 65 percent rate. And there is at best high uncertainty over whether the PRO will achieve the initial source reduction targets over the first three years of program implementation, if not the final 2032 target. We conclude this based on the following considerations, among others:

• **Timing:** Since the 2028 recycling rate mandate will be evaluated based on 2027 data, there is no time for PRO system improvements to increase recycling rates. Even if the PRO were able to aggressively advance system improvements ahead of plan approval, the unavoidably lengthy process of securing approvals and permits, specifying and procuring equipment, and implementing improvements still could not be completed within 2027, much less early enough to benefit the initial recycling rate mandate evaluation. This is equally true of the enhanced education activities needed to boost generator participation. Similarly, the initial source reduction target must be achieved by January 2027, the same deadline as for PRO Plan approval. While member producers have undertaken and are engaged in a range of source reduction activities, the PRO will barely have time to assemble the first Source Reduction Plan, drawing from producer reporting, needs assessments, and final regulations that will become available shortly before the June 15 submittal deadline, let alone help to stand up new reuse/refill systems or rally producers to execute design changes as part of updated packaging strategies.
• **Measurement standards:** Even using historic recycling rate measurements based on tons shipped from a MRF, many covered material categories (CMCs) have current recycling rates well below 30%. But since the draft regulations (in Section 18980.3.2(b)) require measuring the amount of covered material recycled as the weight *sold or transferred by a responsible end market as feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products* (i.e., adjusting downward for post-MRF yield losses), measured recycling rates for SB 54 compliance purposes will actually be much lower than historically reported rates. Inflexible responsible end market verification standards may also contribute to slower than desired progress especially if it leads to short-term disruptions result in two-year exemptions from local collection requirements. Source reduction goal attainment is made more difficult by statutory provisions that can provide credit to producers for progress prior to 2023, but don't allow it to count towards the PRO's industry-wide target as well as by the removal of a PRO adjustment factor to account for changes in demographics as was part of prior draft regulations.
• **Lack of clear market signals to producers.** On the one hand, SB 54 clearly states in PRC 42050 that *producers of covered material sold, offered for sale, imported, or distributed in the state shall achieve all of the following* [recyclability, source reduction and recycling rate mandated targets]. Many stakeholders hoped the aggressive SB 54 deadlines would catalyze substantial early investment and packaging shifts, and to varying degrees, it has. On the other hand, SB 54 also includes the prospect of exemptions (or effectively under draft regulations, extensions) due to unique compliance challenges (under PRC 42060(a)(3)). Draft regulations clarifying this provision (in 18980.2.4) appear to anticipate a decision-making process that balances the pros and cons of continuing to use or phase out certain types of packaging and plastic food service ware. Moreover, the complexity of many SB 54 provisions adds to regulatory uncertainty, especially related to the interplay between SB 54 with SB 343 recyclability standards and AB 1201 compostable labeling standards. Another example of a difficult to discern requirement intended to drive producer action is. We are also keen to understand which past source reduction activities will "count" for producers and/or for PRO industry-wide targets. In

short, many producers may be reticent to make additional major investments in new packaging strategies without greater certainty that they are unambiguously required. While mandatory and potentially subject to fines, bans or other measures for non-attainment, the SB 54 targets are certainly “stretch” goals in the sense that they go well beyond other state EPR program goals and that achieving them would require unprecedented, rapid progress and
innovations at a level never before seen. We are concerned that broad non-attainment of targets could spawn a negative public narrative that in the worst case could compromise California legislators’ commitment to the law and its potential to spur EPR policies in other states.
Following are recommendations that address these broad concerns as well as some more specific related recommendations aimed at maximizing SB 54 beneficial outcomes from efforts to satisfy the performance targets.

Response to O-104-12

Comment rejected. No response to this portion of the commenter's submission is necessary because it states concerns that are prefatory to the proposals offered in the subsequent portions of the commenter's submission. It does not contain those proposals themselves, so no further response is required. To the extent the subsequent portions propose changes or raise objections requiring responses, CalRecycle has responded to those portions accordingly.

Comment O-104-13

Regulations Section and Topic
Need for Additional Plain Language Guidance Documents to reduce uncertainty about regulatory processes and outcomes

Recommendations
The following two topics directly related to compliance with mandated targets appear ripe for guidance documents and CalRecycle sponsored public informal discussions:
• **How will enforcement of interim recycling rate mandates play out.** CalRecycle should describe a timeline of activities and milestones expected to occur after each recycling rate mandate date. A key theme should be the long-term trajectory of SB 54 towards aggressive goals, progress made, and specific strategies now in place, with acknowledgement of the time needed to reach them in practice. To help producers and all stakeholders prepare, the guidance should also describe how the following activities may be sequenced in time, and how they may affect one another as well as producer and covered material compliance outcomes.
- Evaluation of recycling rate mandates and compliance. This includes completing and publishing a required study pursuant to 42061(b) presumably with a public comment period.
- Some covered material exclusion determinations related to federal conflicts may still be pending and be under consideration by CalRecycle. Even if disqualified by CalRecycle, the materials may not yet be considered covered materials due to the 180-day waiting period currently in draft regulations pursuant to 18980.2(a)(2).

- For the initial recycling rate mandate (and possibly subsequent ones), the PRO may be engaged in a study to evaluate whether a REM can be developed for CMCs without a currently identified REM pursuant to 18980.4.3. Also, the PRO may require time beyond program start up to complete the REM verification process. In some cases, covered materials may be shipped to non-verified markets out of necessity.
- Enforcement related to covered material categories not satisfying mandated recycling rates. This may include audits and investigations, notices of violation, consideration of and approval of compliance action plans and potentially two (up to three) year extensions to satisfy requirements, and potentially temporary CalRecycle adjustments to the applicable mandated recycling rate.
- The PRO may submit requests for exemptions due to unique compliance challenges or health and safety related issues under PRC 42060(a)(3) and the CalRecycle review process may overlap with audits and investigations or enforcement actions related to non-attainment of mandated recycling rate targets. It is unclear when CalRecycle anticipates such exemption requests being submitted and how they dovetail with these other enforcement related processes. Producers may also continue to sell covered materials not meeting the recycling rate mandate if they satisfy the equivalent rate provision that requires clarification under PRC 42083, which requires clarification in regulations.
- PRO plan revisions may be necessary in light of lessons learned through implementation to date.
- **Bottom line:** When and under what circumstances might producers learn that currently used covered materials will be banned or that significant monetary penalties or other regulatory consequences may be imposed?

• De-mystifying SB 343 labeling standards and the SB 54 recyclable or compostable mandate. This issue continues to cause confusion among some producers and should be a priority for clear, plain language guidance documents. Issues to cover include:
- The producer obligation to ensure their covered materials meet all recyclable and compostable criteria, including the “product specific” criteria not evaluated by CalRecycle’s category level analysis.
- Clarifying compliance with the recyclable or compostable mandate via alternative vs. local jurisdiction collection programs.
- Timing of requirements and enforcement process related to use of chasing arrows and other recyclable marketing claims under SB 343, including the 18-month delay in SB 343 restrictions becoming effective after CalRecycle’s first April 2025 finalized material characterization study.
- Whether and when CalRecycle may begin to consider market related criteria when updating the SB 54 CMC recyclable list. This includes the SB 343 Basel agreement references in PRC 42355.51(d)(2)(B)(i), the requirement for routine use as feedstock in production of products or packaging in PRC 42355.51(d)(1) and the SB 54 requirement that, to be considered recycled, covered material must be sent to a responsible end market per PRC 42041(aa)(3).

Response to O-104-13

Comment rejected. The commenter does not propose changes to the proposed regulations. Rather, the commenter requests that CalRecycle publish "clear, plain language guidance documents" addressing various topics. Accordingly, no response is required here.

Comment O-104-14

Regulations Section and Topic

18980.4.3 Focus market development investments and PCR sourcing on North America

Recommendations

We concur with concerns of the Association of Plastic Recyclers (APR) that SB 54 incentives and requirements should focus on strengthening North American recycling infrastructure, and we endorse their proposed revisions below to address these concerns.

Comment 1: Apply the source reduction credit pursuant to PRC 42057(a)(2)(B)(i) to recycled content only from North American sources to support the region's recycling programs and responsible end markets. Otherwise, companies would be rewarded for buying recycled content from overseas markets, which are undermining the viability of U.S. and North American recycling operations. Because the recycled content credit is an optional program, not a mandate, it is our understanding that the state has legal authority to allow only North American sources without infringing upon global trade protections. Additionally, while third party certification does not currently report on the use of North American sources, it can be leveraged to do so given the SB 54 program goals and lead time. This can be done through revisions similar to the following:

18980.3.4(b) The Department shall approve an alternative compliance formula as part of a PRO's plan only if the plan establishes the following:

(6) How the formula will grant source reduction credit only for usage of postconsumer recycled content processed at North American reclamation facilities and generated from plastics collected from North American sources.

Comment 2: Direct PRO investments only in domestic or North American operations. Section 18980.4.3 details requirements for the PRO to support the development, expansion, and continued operations of responsible end markets. Consistent with PRC 42051.1(c)(5), that requires the PRO to describe *how the plan will enhance or expand viable responsible end markets in California including manufacturing*, we support the following three APR-recommended revisions:

18980.4.1(a) A PRO or Independent Producer shall include in its plan the method by which it will identify responsible end markets. At minimum, the plan shall:

…(4) Describe how the PRO will give preference to end markets in North America.

18980.4.3(a) … Each plan must establish, at a minimum, how the PRO or Independent Producer will do the following:

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

(A): Financial support shall only be given to U.S. and North American end markets.

18980.6.7(e)(1) (C) A PRO shall set base fee rates for covered material categories to account for investments or other expenditures necessary to develop North American-based responsible end markets for such covered material categories, implement source reduction measures for such covered material categories, or shift to reuse and refill systems.

Response to O-104-14

Comment rejected. See the response to comment O-39-1. CalRecycle regulations cannot lawfully disfavor interstate or international commerce.

Comment O-104-15

Regulations Section and Topic
18980.1(a)(4)(B) Definition of detachable component.

Recommendations
Draft regulations and the current CMC list and guidance document place detachable packaging components in their own covered material category, separate from the base packaging itself. This is problematic in some cases because it can:
• Conflict with design standards and best practices,
• Lower recycling rates,
• Distort the producer fees,
• Create more consumer confusion, and
• Promote poor design choices.

We agree with APR's recognition that one of the goals of SB 54 is to reduce plastic waste from small components, and therefore there is a need to quantify the number and types of plastic components. However, we also agree with APR that the goal to count all components should not undermine recycling efforts, and we believe there is a way for the state to set the definitions to both quantify the number of components and ensure components are effectively recyclable and recycled.

We therefore join APR in requesting that CalRecycle amend the definition of detachable component to recognize that some plastic components are best recycled as part of the base packaging and should be categorized as part of the base packaging.

Response to O-104-15

CalRecycle rejects this comment for the reasons provided in responses to comments O-39-5 and O-41-3.

Comment O-104-16

Regulations Section and Topic
Section 18980.3.2 Methodology for Recycling Rate Determination
Recommendations
Following is a restatement for the record of our past comments aimed at ensuring calculation of recycling rates drives maximum yield rates across the supply chain, is

transparent and accurate, and also in-line with the expectations of negotiators as they determined the percentage recycling rate targets in PRC 42050(c). Comment 1: We support requiring the PRO to set minimum yield rates that must be achieved by responsible end markets, but we recommend for the purpose of evaluating satisfaction of the mandated recycling rates in PRC 42050(c), the weight recycled should be based on shipments from MRFs, per the suggested revisions below. This is needed to render the final 65 percent target reasonably attainable.

18980.3.2(b)(2)(A) For end markets specified in paragraphs (1) through (5) of subdivision (b) of section 18980.4, the weight recycled shall be calculated at the point that the material is sold or transferred by a recycling processor to a responsible end market ~~as recycled content feedstock~~ that meets the quality standards of the responsible end market. ~~necessary to be used in lieu of virgin material for the creation of new or reconstituted products.~~ The weight recycled shall be adjusted as necessary to exclude the proportion of the recycled content feedstock derived from materials other than covered material.

Comment 2: Ideally recycling rates should be evaluated during the same year as the target. That is, the 30 percent by January 1, 2028 target would be evaluated based on data gathered during 2028. This will allow the PRO to have one additional year to improve systems prior to being evaluated. While we do not expect this to be sufficient to greatly alter progress towards the goals due to the significant lead times needed to identify, approve, invest and implement improvements, it will at least provide the PRO with a single program year to demonstrate as much progress as possible ahead of the first goal, and facilitate somewhat goal attainment in future years. Following is one revision that could achieve this:

18980.3.2(b)(1) Recycling rate shall be calculated as the weight of covered material that is recycled divided by the sum of the total weight of covered material disposed of, as described in paragraph (3), and the weight of covered material recycled, as described in paragraph (2). The recycling rate as of a particular date shall be calculated using data from the current calendar year in which that date occurs. ~~over the latest twelve- month period before such date for which sufficient data to make the calculation exists.~~

Response to O-104-16

Comment rejected. Regarding the first proposal, as the commenter impliedly acknowledges, the proposed change would distort the calculation of recycling rates to make it easier to achieve the rates required under Public Resources Code section 42050(c). The proposed change would result in all material accepted by a responsible end market being considered "recycled." That would be inappropriate because the amount of material accepted can include contamination and incompatible materials, pursuant to the end market's specifications. There is no justification for considering those materials recycled for purposes of calculating recycling rates; the commenter's stated purpose of rendering compliance more "attainable" is not a legitimate justification.

Regarding the second proposal. The proposed change ignores the plain text of statute, which requires recycling rate of 30 percent to be achieved "on and after January 1, 2028." The commenter's request would effectively change that to "by any time in 2028." CalRecycle does not have authority to shift statutory targets.

Moreover, the text that the commenter suggests deleting provides clarity as to how recycling rates must be calculated (using data spanning 12 months). That deletion would render ambiguous the application of a major statutory requirement.

Comment O-104-17

Regulations Section and Topic
PRC 42083 - Need to clarify statutory provision allowing use of covered materials not achieving mandated recycling rates.

Recommendations
The following SB 54 provision potentially allows a producer to continue using covered material even if it has not satisfied the current mandated recycling rate targets:

PRC 42083 A producer may offer for sale, sell, distribute, or import covered material in a covered material category that does not meet the recycling rates established pursuant to subdivision (c) of Section 42050 if the producer demonstrates to the department that the producer has achieved the applicable rate for an amount equal to the producer's market share of that covered material category in the state.

This provision is unclear and is not addressed in current draft regulations. Additional clarity is needed for the PRO and producers to understand what specific steps are needed to qualify for continued covered material use, and what the process is to demonstrate that the standards are satisfied. Most importantly, what does "achieved the applicable rate for an amount equal to the producer's market share of that covered material" mean? Is this referring to a producer's use of PCR content in its manufacturing in general or in the covered material used in California specifically? Or is this a reference to what may be, effectively, a sort of tradeable credit system in which one producer funds or arranges for the recycling of their own and/or other producers' covered materials and such efforts recycle at least an amount of material equivalent to the current percentage mandated recycling rate multiplied by the producer's market share of tons in that CMC?

Response to O-104-17

Comment rejected. The commenter erroneously asserts that the proposed regulations do not address Public Resources Code section 42083. Although section 18980.13(h)(3) does not expressly reference 42083, it is based on that statutory provision and provides clarity as to how producers may avail themselves of it. No further detail is necessary because it is sufficiently clear from statute that producers must make a particularized showing of the recycling rate for specific to the covered material for which they are the producer.

Comment O-104-18

Regulations Section and Topic
Section 18980.9. Source Reduction Baseline Report and Need for a Source Reduction Adjustment Factor

Recommendations
We recommend that CalRecycle replace the provision previously established as 18980.8.3 that would require the PRO to propose a source reduction adjustment factor accounting for future changes in demographics. We understand the motivation for striking this section, which will effectively focus SB 54 on achieving more robust plastics source reduction outcomes than would occur if the PRO adjusts the baseline for population growth and other factors. However, we note that under PRC 42057(h), statute already requires CalRecycle in 2030 and every five years thereafter to evaluate the need for additional source reduction and to impose new source reduction requirements on the PRO and producers if the number of plastic components or the overall weight of plastic covered material has increased. We believe that retaining the source reduction adjustment factor is a fair approach that allows businesses to grow while still providing CalRecycle with mechanisms to ensure long-term progress in plastics source reduction.

Response to O-104-18

CalRecycle rejects this comment as the source reduction factor proposed on the comment would essentially definitively modify the statutory baseline by allowing growth-based recalibration of the 2023 baseline, potentially reducing the overall quantity of reduction required to meet the 25 percent target. Such an adjustment would be inconsistent with the plain statutory language in section 42057, which defines the baseline year and reduction metric without reference to population or demand elasticity, and more specifically section 42057(a)(1) which establishes a quantitative, reduction requirement in which producers must achieve a 25 percent reduction by weight and number of plastic covered material. Section 42057 of the PRC does not authorize the Department or PRO to issue the suggested definitive factor as suggested which could effectively reduce the overall quantity of reduction required by statute as requested by the commenter. Further, as the commenter references PRC § 42057(h) of the PRC, this provision provides the Department with authority to evaluate and, if necessary, increase source-reduction requirements, thus strengthening them, and not to offsetting or discounting the statutory threshold requirements. Thus, the comment would undermine and contradict statute, and the Department's authority in section 42057(h) of the PRC already ensures CalRecycle can account for systemic trends which could include population growth and economic growth. Therefore, the comment is rejected. See also response to comment O-89-2 and O-48-5.

Comment O-104-19

Regulations Section and Topic
Need for a clear regulatory pathway to evaluate compostable plastics for designation under SB 54.
Recommendations
At a high level, The Recycling Partnership supports the need for establishing clear requirements that do not eliminate the possibility for compostable plastics or other innovative new materials and packaging formats to qualify for compostable or recyclable

designations under SB 54. We are supportive of policies that would allow the PRO to work with the compost industry, local jurisdictions and recycling service providers to experiment with models that may allow compostable plastics to be integrated into existing local programs and/or collected and processed through separate, parallel systems.

Response to O-104-19

Comment rejected. No response is required because, as the commenter acknowledges, this comment only states the commenter's concerns "[a]t a high level" and identifies "policies" that it supports, without setting forth any identifiable recommendations for revising the proposed regulations. To the extent other portions of the commenter's submission contain proposed changes or states objections requiring responses, CalRecycle has provided responses to those other portions.

O-105: Center for the Circular Economy (Kate Krebs)

Comment O-105-1

Further Considerations for SB-54 Revisions and Updates to Covered Material Categories Regarding Paper Cups

In Response to California's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Introduction

This letter is a response to the release of California's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. In the most recent Update to Covered Material Categories (CMCs), *Released September 2, 2025, and complementary Covered Material Categories Reporting Guidance Documents*, we see that polycoated paperboard/paper hot cups, which are plastic-coated on one side, have been classified into **25_PF10P (Paperboard All Forms W/ plastic component)**. According to the Covered Material Category (CMC) List and recycling and composting determinations, released on January 1, 2025, the 25_PF10P category was deemed as "recyclable". We agree with this recommended designation of 25_PF10P for polycoated paperboard/paper hot cups, which have paper fiber as the dominant material and are lightly plastic-coated on one side. Below we share additional information on the recyclability of paper hot cups and progress being made across the United States today. It is our belief that these fiber cups are readily recyclable and should be included in recycling systems across California.

Who We Are

The Center for the Circular Economy ('the Center') is the innovation arm of Closed Loop Partners, a leading circular economy-focused investment firm in the U.S. The Center executes research and analytics, unites organizations to tackle complex material challenges and implements systemic change that advances the circular economy. The

Center's expertise spans circularity across the full lifecycle of materials, connecting upstream innovation to downstream recovery infrastructure and end markets.

The NextGen Consortium is a multi-year consortium that addresses single-use foodservice packaging waste by advancing the design, commercialization and recovery of food service packaging alternatives. Starbucks and McDonald's are the founding partners of the Consortium, with The Coca-Cola Company and PepsiCo as sector lead partners. Yum! Brands, Wendy's, Delta Air Lines, Toast, Keurig Dr Pepper and Avery Dennison are supporting partners.

The NextGen Consortium takes a multi-pronged approach to addressing foodservice packaging waste through three key workstreams:
1. Fiber Cups: Strengthening recycling infrastructure to recover and recycle more fiber cups after use while also exploring material science innovations that enhance the recyclability, recoverability and/or compostability of paper cup materials.
2. **Polypropylene (PP) Cups**: Expanding national access to recycling for PP cups to increase the availability of rPP in the market.
3**. Reuse Systems**: Advancing reusable packaging systems that keep cups in service for multiple uses. The NextGen Consortium is launching its largest yet multi-retailer activation in 2026 in Southern California. This initiative builds upon the success of the Petaluma Reusable Cup Project launched in 2024. In 2026, reusable cups will be offered by major brands, supported by regional reverse logistics infrastructure and a citywide consumer campaign. The project is designed to address the two key barriers for reuse to scale: cost and consumer adoption.

As described below, there has been growing momentum over the last several years to increase the recycling of and improve outcomes for polycoated paper packaging, including cups nationwide.

About Polycoated Paper Cup Recycling

The typical paper beverage cup (i.e., to-go coffee cup or soda cup/beverage vessel) is roughly composed of 95 percent paper while the remainder of the cup is made up of a thin conventional plastic coatingi. The paper in most cups is made from longstrand, cellulose fibers that are valuable in the recycling system as they enhance the strength and quality of new products made of recycled paperii. The plastic liner coating is typically a thin polyethylene (PE) barrier – on the inside for hot cups and on both sides for cold cups. While the PE-liner has historically been cited as an impediment to widespread recyclability of paper cups, it is increasingly not a challenge and can be separated from the fiber by paper mills in their pulping process. More than 35 mills in North America accept and process fiber cups when sorted into Residential Mixed Paper (RMP) or Cartons bales at the MRF (Materials Recovery Facility)iii.

To learn more about paper cups and the value they can add to the recycling system when captured, please review NextGen's latest report on paper cup recycling: Closing the Loop on Cups: Collective Action to Advance the Recovery of Paper Cups in the

U.S.iv This report demonstrates how the recovery of paper cups increases when each stakeholder in the value chain plays a role, including:
• **Mills** to conduct recycling tests on paper cups to determine how much of the fiber can be captured.
• **MRFs** to conduct material flow studies to determine where best to site interventions (equipment) for cup sortation.
• **Communities** engage with MRFs and mills to evaluate feasibility of adding cups to accepted recyclables lists and share guidance with residents.
• **Consumers** to bring their own reusable cups when they can and to check local recyclability options and guidance when using paper cups
• **Brands** to source recycled paper content when procuring their cups and other packaging, among other activitiesv.

Paper Cup Recycling Progress to Date

Since NextGen's inception in 2018, we have been collaborating with other stakeholders to increase the number of cities, material recovery facilities (MRFs), and paper mills that accept, sort and process paper cups into specific paper grade bales. Through these efforts, we have actively engaged with dozens of subject matter experts and stakeholders across the recycling value chain (MRFs, mills, recycling labs, consumers, communities, etc.) and can offer the following perspectives on cup recycling efforts and opportunities:
• **The paper in fiber cups is high quality, strong and desirable.** From our work with paper mills, and the paper industry's public statements, we know that the fiber in cups is high quality and can help offset declining feedstock volumes of other paper types such as newsprint, magazines, high-grade office paper and paper catalogsvi.
• **A growing number of paper mills can successfully recycle paper cups.** According to the Foodservice Packaging Institute (FPI), as of June 2025, there are more than 35 mills that accept cups in bales of mixed paper or aseptic and gable top cartons in North Americavii. The mills that accept cups in mixed paper represent more than 75% of domestic mixed paper demandviii. These mills can separate the polyethylene liner in the pulping process so that the valuable fiber can be captured at high rates and reprocessed. Several large mill companies such as Sonoco and Georgia Pacific have conducted cup trials in recent years to demonstrate their ability to effectively recycle the cups. o As of summer 2025, companies including Georgia Pacific and Graphic Packaging have made announcements of new mills that are able to accept polycoated paper cups. ixx
• **Paper cup recycling and repulping tests demonstrate a high fiber yield**. NextGen's work confirms these findings, supported by results from its test at Western Michigan University's paper pilot plant, where a standard polycoated paper cup passed the recycling and repulpability test, demonstrating a **fiber yield of 89 percent** (well above the 80 percent benchmark needed to pass that portion of the test)xi. *A copy of the full repulpability/recyclability study is available upon request.*
• **Cups can be effectively sorted by MRFs**. NextGen has collaborated with FPI and RRS, and partnered with several large and mid-sized MRFs across the United States (most of which are the main processor for their municipality, including top ten cities by population in the US) to conduct flow studies to better understand how cups flow

through a MRF environment. Based on this work, we know that cups can be diverted to mixed paper or polycoated paper bales through technology (e.g. optical sorters, robotic sorters, etc.) or manual sorting effortsxii.
o In Dallas, Texas, NextGen, the Foodservice Packaging Institute, and the Carton Council collaborated on a grant to install robotic equipment at the local MRF (FCC Environmental Services) to create a cup and carton bale with an end market customer purchasing the balesxiii. As a result, Dallas promotes the recycling of paper cups to its residents.
o In 2025, at TFC Recycling in Virginia, NextGen collaborated with Foodservice Packaging Institute to support a MRF equipment grant that would help effectively sort and capture cups at TFC Recycling to bales designated for recycling.
o In 2025 in Austin, NextGen collaborated with the Foodservice Packaging Institute and Carton Council on a grant to install robotic equipment at the local MRF to create a cup and carton bale with an end market customer purchasing the bales. As a result of these engagements, Austin, Texas promotes the recycling of paper cups, among other items such as beverage cartons and coated paper products to its residents.xiv
o As of June 2025, the Recycled Materials Association (ReMA) has officially updated the ReMA ISRI specifications "to include the board-approved addition of 'Paper cups' to the allowable paper commodities in the Inbound Residential Single Stream and the Inbound Residential Dual Stream specifications". REMA is a global recycling industry organization, and their specifications help set standards for recycled materials and guide material buyers and sellers.xv This formal, industry-wide recognition is a critical milestone for paper cup recycling and enables future recycling opportunities. xvi
• **A growing number of US cities and counties have added cups to their lists of acceptable recycling items.** Several major US cities including San Francisco, Seattle, New York City, Denver, Atlanta, Chicago, Detroit, Louisville, Portland, ME, and Washington, DC, among several others, can effectively recycle cups and accept cups in their residential recycling streamxvii. The list of cities will continue to grow as they see more MRFs and mills accepting, collecting and effectively reprocessing cups. Some notable examples of wider cup recycling adoption follow:
o In February 2022, Rumpke, one of the nation's largest privately-owned recycling firms, announced it would begin accepting fiber cups at its MRFs, as well as in its curbside and drop box programs across Indiana, Kentucky, and Ohioxviii.
o According to The Recycling Partnership's Community Recycling Program Acceptance Data database, ~15% of communities in the U.S. accept paper cups in recycling programs as of June 2025. This access rate has gone up several percentage points in the last few years.xix
• **Paper cups are being more widely accepted in regions with EPR regulations in place, including Ontario, Canada**. In September 2025, it was announced that hot and cold paper cups would be recyclable province-wide (starting in 2026) following a successful pilot in Toronto. xx The pilot demonstrated an increase in the collection of plastic-lined paperboard (polycoated paperboard) and that this material was being successfully "sent to end markets where they are recycled and repurposed into new paper products".xxi This example illustrates a terrific proof point for State and/or Province wide acceptance of a format such as paper cups, after sufficient testing.

Response to O-105-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-105-2

Recommendations

The Center is actively working across multiple channels to divert cups from landfill and keep their valuable materials in circulation. Our extensive research over the past six years shows that there is no single solution to fully address cup waste challenges, especially as alternatives require additional testing and scaling to ensure they're properly recovered and don't end up in a landfill. To successfully achieve reduced cup waste and fiber cup recovery at scale, we recommend:

• Realistic requirements for recyclability and compostability or clarity on the onramp and resources to increase fiber cup recycling infrastructure in California before compliance begins.

• Clear pathways for recyclability determination in the Covered Materials Categories (CMC) list when innovations are developed that eliminate nonrecyclable components of a packaging item.

• Design for recycling guidance to ensure greater uniformity and marketability of captured materials and avoid excess contamination/look-a-likes that might depreciate value.

• Exclusion of the requirement that packaging needs to meet the USDA's National Organics Program definition for an organic input to be deemed compostable in SB-54.

When single-use packaging, including polycoated paper cups and compostable packaging, are captured for recovery, California will reduce the number of these items going to landfill. To accomplish this, these packaging types need to be accepted in the statewide recycling system. Below we've highlighted a few areas of the current draft that could be modified for clarity.

- **The process of changing a packaging item's determination on the Covered Material List (CMC) to recyclable or compostable is unclear**: In Section 18980.3, a covered material item's evaluation of recyclability is determined as well by its compliance with SB-343. This statute requires packaging to have statewide recycling access of 60%. Currently fiber cups do not meet these requirements with statewide access currently falling under a 20% acceptance rate in California. It is our understanding that failure to meet certain access thresholds will hinder an item's determination as recyclable in SB-343 and impact CMC designation. It's unclear how to build access and recovery rates, and capitalize on momentum for certain items, such as paper cups, if they currently fall below required thresholds for labeling as recyclable or use of the "chasing arrows". Further, this might impact a wider array of covered material category

items that, in the absence of labeling, are unable to market recyclability guidance to customers and subsequently build capture and recycling rates required by the state.

- **Lack of clear guidance on consumer communication around package recyclability**: Section 18980.3.1 **Recyclability of Certain Material Categories** suggests information needed to move a material on the CMC and use the claim of being “recyclable”, but does not clearly articulate how a package can utilize clear, simple and easily recognizable communication to consumers that the package is indeed recyclable. Without consistent and repetitive communication, consumers and the whole recovery supply chain will not be able to substantially increase capture of recyclable items. The regulations should clarify how to increase capture using simple tools like chasing arrows, which are a longtime communication symbol for recycling.
- **Lack of clear process for onboarding new innovations**: Section 18980.3.1 explains how a producer can advocate for a covered material to be recognized as recyclable by providing evidence of increased collection and sorting efforts in the state. However, it does not describe how packaging (or modification to a packaging format) currently not on the CMC list has a pathway to recyclability. If an innovation is developed, such as a paper cup with an alternative liner with minimal plastic or bio-based component (several of which are in development), it would be difficult to show an increase in collection within the state’s program when they are not currently accepted. This can potentially limit coating/barrier technologies coming to market that could make cups (and other paper-based packaging) a more valuable commodity to MRFs and paper mills that seek fiber feedstocks. Generally, it would be helpful to provide clear onramps for packaging innovation that can help remove elements of a package that deemed it non-recyclable, to one that should be acceptable in the system.

Response to O-105-2

Comment rejected. The commenter identifies three areas "that could be modified for clarity." First, the commenter alleges that the "process" for packaging that is currently not recyclable or compostable achieving recyclability or compostability is unclear. The problems the commenter identifies, however, are not lack of clarity in the proposed regulations. Rather, the commenter asserts that it is unclear how packaging can comply with the aggressive thresholds set in statute, not any compliance requirement that the proposed regulations can affect or further clarify. In other words, the commenter's concern is with how the PRO plan and producers' actions pursuant to it will result in compliance. The proposed regulations cannot relax the compliance standards, but they do set forth how CalRecycle will implement the statutory exemptions, which provide opportunity for relief in the event that statutory standards cannot be met (see section 18980.2.4). Moreover, the commenter does not propose any change to the regulatory text for CalRecycle to consider. Accordingly, no change in response to this comment is necessary.

Second, the commenter states that there is a "[l]ack of clear guidance on

consumer communication around package recyclability." The commenter's concern appears to be over how producers can communicate how to recycle materials without violating the restrictions of Public Resources Code section 42355.51(a) or (b). CalRecycle, however, does not have authority to enforce deceptive labeling laws, and how a product is labeled is irrelevant to CalRecycle determinations of compliance with the current statute. Therefore, any guidance it could state in its proposed regulations would not have the force of law with respect to such enforcement, with the notable exception that Public Resources Code section 42061(a)(3)(B) does give authoritative effect to CalRecycle's "trending" determinations for labeling purposes. To the extent the commenter proposes that CalRecycle establish an exemption from the labeling restrictions of 42355.51(a) and (b), no change is appropriate because CalRecycle has no authority to establish that exemption. CalRecycle notes, however, that it may be possible for CalRecycle to collaborate with government entities with enforcement authority under 42355.51 to publish informal guidance, such as "frequently asked questions," concerning their enforcement authority, and such publications may satisfy the commenter's implied request for "clear guidance."

Lastly, the commenter asserts that there is a "[l]ack of [a] clear process for onboarding new innovations." The commenter requests "clear onramps for packaging innovation." However, CalRecycle cannot create new onramps or exemptions other than those authorized under statute. Fortunately, no new onramps or exemptions are needed to accommodate the commenter's concerns. Where the "trending" onramp under Public Resources Code section 42061(a)(3)(B) is unavailable, exemptions pursuant to section 42060(a)(3) (addressed in section 18980.2.4 of the proposed regulations) establishes the appropriate on-ramp through "phase-in" plans. In other words, when new innovations foreseeably will result in compliance but cannot possibly currently comply due to the newness of the material, an exemption with a phase-in plan provides the onramp requested.

The first portion of this comment also briefly states recommendations specifically aimed at "achiev[ing] reduced cup waste and fiber cup recovery at scale." Those recommendations largely overlap with the comments addressed above. To the extent they do not, CalRecycle responds as follows:

• Regarding "[r]ealistic requirements of recyclability and compostability." CalRecycle cannot accommodate that request because those requirements are established in statute. While CalRecycle can (and does, in section 18980.2.4) implement a process for granting exemptions described in statute, CalRecycle cannot change the requirements themselves.

• Regarding "clarity on the onramp and resources to increase fiber cup recycling infrastructure in California before compliance begins," the responses above address "onramps," and how industry can improve current infrastructure is beyond CalRecycle's purview. CalRecycle's mandate is to implement and enforce the statute, not to dictate how industry addresses infrastructure needed "before compliance begins."

• Regarding "[d]esign for recycling guidance to ensure greater uniformity and marketability of captured materials and avoid excess contamination/look-a-likes

[sic] that might depreciate value," dictating how industry addresses such challenges is beyond CalRecycle's statutory authority. Rather, statute contemplates producer responsibility plans and their implementation to address such infrastructure needs.
• Regarding the "USDA's National Organics Program definition for an organic input," the commenter appears to propose that CalRecycle declare the requirement stated in Public Resources Code section 42357(g)(1)(B) inapplicable to whether covered material is "eligible to be labeled 'compostable.'" Statute unambiguously incorporates that requirement along with the rest of section 42357, so CalRecycle cannot lawfully make the requested change.

Comment O-105-3

Conclusion

The Center for the Circular Economy recommends that single-lined, polycoated paper cups retain a recyclability designation and stay in circulation to prevent unnecessary landfilling. As illustrated above, there has been tremendous progress and recognition on polycoated paper cup recycling nation-wide and a clear opportunity for the material in California, although more access and acceptance needs to be built locally. Furthermore, while we are working diligently on reusable solutions, and new material innovation, we recognize that there is no single solution to address food-services packaging waste, and a concerted effort to build recycling infrastructure to capture these valuable materials is critical while alternative models, such as reuse systems, are developed and scaled.

We would be happy to discuss with CalRecycle any additional research needed and answer any questions you might have about our work advancing the circularity of this widespread packaging category. Thank you for this opportunity to share our research.

Response to O-105-3

Comment rejected. The comment concerns recyclability designations on the Covered Material List that CalRecycle published, not the proposed regulations. Accordingly, no substantive response is required here.

O-106: AMERIPEN (Gregory Melkonian)

Comment O-106-1

Good morning.· My name is Gregory Melkonian, and I'm an analyst with Serlin Haley. But I am here on behalf of our client, AMERIPEN.

AMERIPEN, or the American Institute for Packaging and the Environment, represents the entire packaging value chain from material producers to brand owners to recycling partners.· AMERIPEN represents all material types as well, including paper, metal, glass, and plastic.

To begin, we want to express gratitude towards CalRecycle staff and Director Heller for the thoughtful work and many hours involved in this year's rulemaking. While we may not agree with some of the outcomes in the proposed rules, we know the Department listened to and considered input from the public to try to craft better policy.

In particular, I'd like to call attention to several areas in the rules that have improved since last year.· First, we are grateful for the clear direction for identifying covered materials, more details regarding the exemption request processes, and a better outline of producer hierarchies.· These elements will make it easier for producers to participate in and comply with SB 54.

Next, we recommend CalRecycle -- sorry.· We commend CalRecycle for removing many complicated provisions for reuse and refill.· As mentioned before, there may be more work to be done in this area going forward.· But it's important for there to be flexibility now in order to foster innovation and help provide scale in this fledgling sector.

Third, the rules that clarify eligible cost and reimbursement methods are well-crafted.· They will help ensure the program expenses are appropriately contained and funded.

Response to O-106-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-106-2

That being said, it wouldn't be a comment opportunity without pointing to some areas of disagreement.· AMERIPEN would like to call attention to the following issues that remain and are likely to hinder the goals and implementation of SB 54.

As one example, changes made to the proposed rules this year limit the department's obligation to update the covered material categories list when new information becomes known.· It is critical that the list adapts with growing investment and efforts to boost recycling, especially in the early years of the program. AMERIPEN requests that CalRecycle recommit to making more responsive updates to the list.

Response to O-106-2

Comment rejected. This comment appears to be directed at section 18980.2.5(a) and (b), but those provisions only implement the unavoidable logical conclusion that, when CalRecycle reviews the covered material categories list but finds that there is no new information or changed circumstances meriting a change, there is no "update" to make. These provisions do not "limit the department's obligation to update the covered material categories list." There is no obligation to make changes to the list at any one time; rather, Public Resources Code section

42061(e) and (f) requires CalRecycle to establish a process for updating the list. It defies logic to say that any such process must, every time CalRecycle reviews the list, a change must be made.

Comment O-106-3

Second, AMERIPEN reiterates that the design of the trending on-ramp connected to SB 343 is arbitrarily limited.· As it stands, this is counterproductive because it will actually hinder efforts to make certain materials more recyclable.

Response to O-106-3

Comment rejected. No substantive response is required because the comment raises vague concerns that the trending on-ramp is "arbitrarily limited" without stating any specific recommendation or explanation of its objections to the proposed regulations.

Comment O-106-4

And finally, this year's version of the rule text omitted the provision that would have allowed for adjustments to the source reduction baseline based on factors outside producers' control, such as population growth.· We believe the Department has regulatory authority to implement such adjustments, and we ask it to reexamine this area to avoid unwarranted market impacts.

Response to O-106-4

CalRecycle rejects this response for the reasons stated in comment responses O-89-2 and O-48-5, and O-104-18.

Comment O-106-5

In closing, AMERIPEN appreciates CalRecycle's deliberate work developing these rules, but urges the Department to consider the remaining areas of concern as the program rolls out.· Our written comments speak to the full scope of issues, and we are always happy to discuss them further with the Department.· Thank you.

Response to O-106-5

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-107: Association of Plastic Recyclers (Allison Kustic)

Comment O-107-1

Good morning.· I'm Allison Kustic with the Association of Plastic Recyclers.· I'd like to raise two main points that we think need to be addressed in the regulations.

First is that the regulations should build a system that supports North American recycling infrastructure.· SB 54 is meant to build a transparent and robust recycling system for California, and this must include investing in recycling infrastructure in California and throughout North America rather than that outside of North America.

SB 54 is about collecting recyclable materials.· But if there are no markets to sell that recycled plastic back into, the system will break down and California won't have a circular economy.

California plastic reclaimers are really struggling to stay in business as companies buy recycled plastic from overseas instead of buying locally.· We've seen this really close at home.· Just last month, we saw the closure of rPlanet Earth, the Southern California PET reclaimer, in part because they couldn't compete with the extremely low price of imports.

This is a huge loss in recycling capacity within the state and for all of North America.· We think that we really can't wait to address this issue.· And to that end, we've provided details in written comments for how the regulation language can be changed to better support North American recyclers.

Response to O-107-1

Comment rejected. CalRecycle regulations cannot lawfully disfavor interstate or international commerce.

Comment O-107-2

Specifically we'd like to see that the source reduction credit for the use of recycled content be granted only for the use of recycled content produced from North American sources and processed here as well. And we'd like to see investments made only to domestic or North American recyclers.

Response to O-107-2

Comment rejected. CalRecycle regulations cannot lawfully impose different restrictions or confer different benefits based on whether business is conducted with foreign versus domestic partners.

Comment O-107-3

The second issue I'd like to raise is the definitions of plastic components.· We ask that not all plastic components be treated the same when it comes to recycling.· The

definition should differentiate between components that are and are not recycled with the container.

We really want to build a system where it's easy to recycle the entire container as one unit and people don't have to take off caps, sprayers, labels, and all of those kinds of things.· And so the component definition should reflect that the package is where this is the case.· Where it can go and be recycled with the base product.

So we need to make sure that products are designed to be recycled.· And to do that, there should be differentiation in the definition of how components are put into covered material categories.· Thank you.

Response to O-107-3

Comment rejected. The proposed regulations do not include a definition of "plastic components." Statute defines that phrase and the definition of "plastic" in plain terms (Public Resources Code section 42041(t) and (u)). To the extent the commenter intended to request that the proposed regulations should define detachable components with respect to how consumers are instructed to recycle them or with respect characteristics that cannot be ascertained before they are discarded, CalRecycle rejects that proposal for the reasons provided in response to comments O-39-5 and O-41-3.

O-108: Black Women for Wellness (Dr Zoe Cunliffe)

Comment O-108-1

Okay.· Good morning, all.

My name is Dr. Zoe Cunliffe, and I am the environmental justice program manager at a nonprofit called Black Women for Wellness and a member of the California statewide EJCAP coalition.· As Tevin named, that's the Environmental Justice Communities Against Plastic.

My comment will really be building on what some allies and colleagues have mentioned.· But I really want to bring, like, the EJ perspective on why it is that, like, these particular limitations of the regulations are so important in my comment.

So, Black Women for Wellness, BWW for short, is a reproductive justice and human rights organization based in South LA where an EJ team works to build healthier communities by addressing issues caused and perpetuated by environmental racism.

One of our major campaign areas is tackling the life cycle of plastic, which has a significant negative impact on health.· And especially reproductive health, given the high incidence of endocrine-disrupting chemicals in plastics and processes related to plastic, something that Black families and Black women in particular are overexposed to.

BWW has been conducting robust community engagement on plastics and the SB 54 process, specifically over the past two or more years, including a firm banking effort that reached over 11,000 people and culminating in a community report that we released earlier this year.

I'm raising this because, really, this community engagement is what informs and is behind my public comment today and this response to the regulations.· So I want to touch on three of the significant limitations with the draft regulations and why these things really need to be addressed in order to meet EJ needs.

Response to O-108-1

CalRecycle rejects the comment. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. To the extent that this portion is preface for subsequent portions that are specific, CalRecycle has responded to those comments separately.

Comment O-108-2

So first, as already raised by others, I think a significant limitation with the regulations as they currently stand are the way that the exclusions to covered materials are currently described.· Right?· So the draft allows for these exemptions if producers claim that it is not reasonably possible to use packaging that also complies with USDA or FDA rules or regulations.

This language is far too subjective.· And as has been mentioned, potentially allows producers to exclude these large swathes of food packaging and other kinds of packaging from the regulations and dodge accountability this way.

This is worrying for all sorts of reasons. But especially because low-income BIPOC communities across California typically face a particularly high burden when it comes to highly-processed and overly packaged foods.

For example, one in four Black people across the country face food insecurity.· And the foods most available to these folks are awash in single-use plastic.· So these are the reasons that it's really important that all relevant plastic food packaging is subject to these regulations and that these kinds of exemptions aren't made possible.

Response to O-108-2

Comment accepted. CalRecycle has revised section 18980.2(a)(2) to address the commenter's concern. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further

explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-108-3

So the second limitation I want to touch on then is something that Nick brought up.· That this is the -- the standards currently proposed for reuse and refill are not sufficiently strict, because there is no quantifiable definition given of the kind of reusable, refillable language in the regulations.· Without this kind of definition, the regulations leave open the
possibility of producers bringing in false solutions and reuse systems that are not worthy of the name.

As the communities that EJCAP represents can attest, when strict definitions and accountability measures are absent, producers and polluters can and will shirk their responsibilities.· And this must be avoided, otherwise it's BIPOC and low-income communities that suffer the most.

It's really important for SB 54 to pave the way towards genuine reuse and refill infrastructure and systems.· And for these systems to operate in all communities, especially EJ communities where the need for alternatives is most keenly felt and has been called for repeatedly.

Response to O-108-3

CalRecycle rejects this comment because it does not describe or specifically propose what it means by "a quantifiable definition" to add to the proposed regulations. CalRecycle also rejects this comment for the reasons provided in response to comment B-6-2 and because the statute contains straightforward standards for what constitutes "reusable" or "refillable" packaging. Section 18980.2.1 of the proposed regulations interpret those provisions to the extent necessary for regulated entities to comply with the law and for CalRecycle to enforce it. CalRecycle's responses to comments I-30-2, B-38-3, O-75-3, and O-48-4 provide additional bases for CalRecycle's decision not to revise section 18980.2.1.

Comment O-108-4

Third and finally, and again, this has come up already.· But a really big problem with the regulations as they currently stand is that they permit chemical recycling.· Right?· So-called advanced recycling, advanced manufacturing.· Whatever it is, it's just some form of incineration by another name.

So the technologies involved in chemical recycling are toxic to air, water, and soil.· And always end up polluting and damaging the health, particularly of communities of color.· Right?· So the pollutants released by chemical recycling and these processes are linked to all sorts of health harms including cancer, reproductive harms, respiratory illness, and so on.

The whole point of SB 54 is to reduce plastic production and protect public health, especially the health of EJ communities.· Right?· This is why the Plastic Pollution Mitigation Fund is supposed to generate these funds that go specifically to mitigate harms to these communities.

We can't end up in a situation where these PPMF funds that are much needed, right, a much-needed aid to addressing long-standing environmental racism across California, they can't just end up being a Band-Aid to fix problems like chemical recycling that SB 54 itself ends up making worse.

So in general, thank you for your time today. And I just really want to urge CalRecycle in finalizing and implementing and moving forwards with the SB 54 process to really center environmental justice communities and organizations.· Because it's really these communities that are the most harmed by the toxic life cycle of plastic.· Thanks.

Response to O-108-4

Comment rejected. To the extent the comment implies that "chemical recycling" be banned outright in the regulations, a complete ban on any technology could have been accomplished through straightforward, specific language in the Act that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology. CalRecycle also rejects this comment for the reasons stated in response to comment O-62-1.

O-109: Californians Against Waste (Nick Pappas)

Comment O-109-1

We had submitted comments repeatedly.· Maybe a dozen times at this point.· We've testified at every single workshop.· Probably every single advisory committee meeting.· So at this point it feels kind of redundant to repeat the same points.

We do have a very detailed comment letter coming later today.· I just want to highlight the three -- what I think of as the three biggest flaws in the current proposed regulations.· And again, I feel like I'm a broken record.· But I guess that's sort of part of the process.

Now, on the chemical recycling, I think you've stretched really far from the statutory limits on what is allowed here.· You know, take the hazardous waste section specifically.· That one seems to be the most egregious.

The statute says that you're supposed to not allow facilities that generate significant quantities of hazardous waste.· And I don't think you have followed any one of the words in that statement, because it's about generation.· And I don't think you even looked at generation.· You looked at disposal.

Significant quantities has been defined as being in compliance with a permit, which doesn't say anything about whether or not it's a significant amount. And quantity is quantity, not the quality of the hazardous waste.

And finally, the definition of hazardous waste.· You all are relying on the federal definition, when it's pretty clear that California law is governed by a different definition of hazardous waste.

Response to O-109-1

CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

Comment O-109-2

On the exclusions.· The current exclusions, while the most recent draft does get a little bit better, it does still create really broad loopholes that will be abused without a doubt.· You know, look at the -- well, first of all, I mean, the legislature laid out specific exclusions.· And that should be the range of exclusions that are in the regulations.

The fact they go beyond that is inappropriate, period.· And anything beyond that should be considered under the unique challenges exemption, which is intentionally not a permanent exclusion.

And then, you know, you look at some of the federal language.· And I keep going back to the fact that it lists compliance with legislation, regulations, or guidelines.· Right?

And "guideline" is an ill-defined term that could mean a single email issued from the Trump administration saying that whole categories of packaging should be in plastic.· A guideline doesn't have any kind of Administrative Procedure Act.· Doesn't have any kind of regulatory process.· It is not a defined legal term.

And again, after these regulations are adopted, the regulated community that wants to be exempt just has to ask FDA or USDA to put out a statement about how important it is for plastic to protect food safety, or whatever they're arguing for.

Response to O-109-2

Comment partially rejected and partially accepted. Regarding the assertion that exclusions in the regulations are overbroad, no substantive response is required because the commenter does not identify the particular exclusions alleged to be broad. To the extent the commenter intended to refer to the exclusion in 18980.2(a)(2) for packaging for food and agricultural products that presents conflicts with federal laws, however, CalRecycle accepts this comment for the reasons provided in response to comment I-19-1, explaining the revisions responsive to this and similar comments. CalRecycle declines the commenter's recommendation to remove the term "guidelines" because the statute itself uses

that term. See, also, CalRecycle's response to comment I-59-2. CalRecycle partially accepts the comment, however, to the extent that "guidelines" might have been interpreted to refer to non-mandatory legal provisions. Because the statute uses that term as an example of "a federal law or regulation," it cannot be interpreted to encompass non-mandatory suggestions by federal government entities, and it is axiomatic that a mere suggestion presents no compliance obstacle or direct legal conflict; one cannot violate a mere suggestion. Accordingly, the regulation has been revised to clarify that merely voluntary guidelines cannot, by themselves, create a direct legal conflict with federal law. To the extent this comment was intended to recommend deletion 18980.2(a)(2) and reliance on exemptions under 18980.2.4 in its stead, CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-109-3

The last thing I want to highlight, which hasn't really gotten as much attention but I think is another major pitfall, is the fake reuse.· I think the original regulations probably were a little bit too prescriptive when it came to reuse.· But the current regulations really open the door for rebranding disposables as reusables and not changing the status quo.· And that's not what the public wanted.

You know, we did repeated polling when we looked at the ballot measure a few years ago with overwhelming support from the public for really wanting to see systemic change from the current packaging to less packaging and to more recyclable and compostable alternatives.· And allowing people to more or less rebrand disposable packaging as reusable totally defies that entire purpose.

We have, again, like I said, a lot more comments.· And I know you've heard all these comments before.· I'm not sure if there's going to be any changes taken based on them, because so far they've clearly not been accepted.· But appreciate your time anyway.· Thank you.

Response to O-109-3

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

O-110: CALPIRG (Emerson Damiano)

Comment O-110-1

Hello.· My name is Emerson Damiano, and I am a zero waste associate at CALPIRG in Los Angeles.

I have always been passionate about reducing plastic pollution, because it is an incredibly disastrous problem that causes a multitude of health effects and environmental crises, as previously touched on.

Microplastics have been found in the deepest depths of the ocean where humans have little to no access, proving the extent of our impact on our surrounding environments.· In fact, the equivalent of one dump truck of plastic goes into the ocean every 45 seconds.

SB 54 was a groundbreaking legislation regarding plastic pollution regulation in the United States.· However, this legislation is at risk of being weakened.

Response to O-110-1

Comment rejected. No substantive response is necessary because the commenter provides no identifiable suggestions as to how the "legislation is at risk of being weakened". The regulations do not alter SB 54; rather, they interpret and implement the statute as written.

Comment O-110-2

Current regulations do not at all protect against harmful chemical recycling, as my colleague touched on, which is quite literally just a new term for incineration.· Chemical recycling creates toxic pollutants that harm our environment and threaten public health and does not reduce demand for new plastic to be created.

Additionally, these regulations unlawfully exclude new, broad categories of products such as food and agricultural products or over-the-counter drugs, which leaves more plastic to pollute the environment.

Therefore, CalRecycle should strengthen these regulations so that only real recycling technologies are allowed in our state, not chemical recycling. CalRecycle should also not allow for broad exclusions of packaging for the aforementioned products, but instead institute an exemption process.

Thank you so much.

Response to O-110-2

CalRecycle partially accepts and partially rejects this comment. Regarding chemical recycling, CalRecycle rejects this comment for the reasons provided in response to comment O-62-1. See, also, CalRecycle's response to comment I-6-

1 regarding incineration. Regarding over-the-counter drugs, CalRecycle rejects this comment for the reasons provided in response to comment O-49-1. Regarding the suggestion that an exemption process should apply, CalRecycle rejects that suggestion for the reasons provided in response to comment I-59-2. To the extent the commenter intended to suggest removal of section 18980.2(a)(2), regarding food and agricultural packaging, CalRecycle rejects that suggestion for the reasons stated in response to comment I-19-1 and I-59-2. CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-111: CALPIRG (Fiona Hines)

Comment O-111-1

Hello.· I'm Fiona Hines.· I'm with California Public Interest Research Group education fund, also known as CALPIRG education fund.· We're a public interest advocacy group that works on a number of issues that mainly are trying to solve problems that affect Californians' health, safety, and well-being.

And when this bill first passed, we delivered thousands of petitions in support from Californians, and we had done so again.· This latest draft regulation we delivered over 4,000 petitions asking for them to be tightened and strengthened. ·

Like I said, we've had thousands of conversations with Californians both at their door, on college campuses, and around community events.· We've heard time and time again is that Californians want real solutions to wasteful and polluting packaging.· They understand that their decisions alone will not solve the issue.· That we need systemic change from industry and government working together, which I understand this bill is trying to do -- this law is trying to do.

So ensuring that this law is implemented with strong regulations is the best way we can do this the quickest way possible.· And so I agree with what my colleagues had said previously that there was a couple things we're specifically concerned about today.

One is the weakened protections against chemical recycling, also known as advanced recycling. The language of SB 54 was clear that recycling technologies that were prohibited, if they provide -- if they create more hazardous waste than mechanical

recycling.· And the new regulations make this prohibition more vague, and also moot without a permit.

And so this is not how we should be protecting our communities from harmful technologies.· And we would say that plastics-to-fuel facilities aren't solving the problem.

They're not reducing the demand for virgin plastics, and there's also the concern that some of them are creating new harmful waste.· And even those that in theory might be able to convert plastic waste into new plastics do pose major threats that we think are of concern, including releasing carcinogenic chemicals into the air.

So we would urge you all at CalRecycle to strength the regulation so that only real and safe technologies are allowed in our state and not ones that we -- could be allowed with both those changes I made to this law.

And we think that failing to do so risks the health of Californians and threatens to undermine the key intent of this law, which is to greatly reduce the amount of plastic waste we're producing and discarding into our environment and protect our communities from the environmental and health impacts of plastic production disposal.

Response to O-111-1

Comment rejected. With regard to chemical recycling, the comment expresses general concern but does not suggest specific changes to the proposed regulations. SB 54 does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology. Thus, no further changes are necessary to the implementation or enforcement of the Act.

Comment O-111-2

And like our colleagues before us said, we're also concerned that the new FDA USDA exclusions risk creating major unintended loopholes that would deal a massive blow to the intent of this law, which is to unnecessarily limit -- and also unnecessarily limit the amount of waste that this law could prevent.

We don't think that entire categories of food or agricultural or over-the-counter drugs should be excluded carte blanche.· And producers seeking exclusion should have to provide detailed verification subject to public notice and public comment.· And any exclusions granted should be time-bound.

Without these changes, I personally really fear that the plastic waste this law was passed to prevent will continue to fill our landfills and litter our communities.· And I don't want that to happen, as I think none of you want that to happen either.

And so I urge CalRecycle to heed the suggestions and strengthen these regulations so that California can truly be a leader in protecting our communities from toxic pollutants and waste.· Thanks so much.

Response to O-111-2

CalRecycle partially rejects and partially accepts this comment. Regarding over-the-counter drugs, CalRecycle rejects this comment for the reasons stated in response to comment O-49-1. Regarding food and agricultural packaging, the commenter incorrectly asserts that they are all categorically excluded; to the contrary, the proposed regulations only exclude packaging for which there is an intractable conflict with federal law. The commenter is also incorrect that the proposed regulation (section 18980.2(a)(2)) creates any "carte blanche" exclusion. Entities seeking to avail themselves of the exclusion are required to explain the basis for their claim that it applies. CalRecycle also rejects the suggestion that the exclusion should be subject to "public notice and public comment." Even if the types of packaging that are excluded are few, the number of specific examples of each type is likely to be large, and imposing a public notice and comment requirement would be impracticable.

CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear regarding what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-112: Circular Action Alliance (Roxanne Spiekerman)

Comment O-112-1

Thank you very much. My name is Roxanne Spiekerman, and I'm the director of plastics for Circular Action Alliance. I'm here speaking as proxy for Emily Coven, a California executive director. I'd like to thank the Department for the opportunity to submit written comments that will be written -- submitted by later this evening on the regulations, as well as the opportunity to speak here today.

CAA is honored to have been selected in January 2024 as a Producer Responsibility Organization for the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

As a nonprofit, producer-led organization, CAA is committed to helping producers comply with EPR laws, delivering harmonized, best-in-class compliance services, and to working with governments, businesses, and communities to reduce waste and recycle more.

Since being selected as a PRO under SB 54, CAA has been fortunate to have many opportunities to engage with interest-holders across the spectrum, including producers, trade associations, local governments, haulers, processors and markets, and numerous nongovernmental and community-based organizations.

One overreaching theme has emerged from those conversations. There is alignment. A shared goal of making this law work. Where we regularly find differences, and sometimes vehement ones, is not the what but the how. Well, we certainly will hear today about many of those differences of opinion.

CAA would like to assure CalRecycle and all the interested parties present that regardless of where the regulations land, we are deeply committed to implementing SB 54 effectively and ensuring the program's success.

That said, success will become exponentially more difficult if the regulations are not finalized by the end of the year. So we encourage everyone here to work together to resolve our differences, giving producers jurisdiction and service providers the certainty and clarity we all need to launch this program on time for 2027.

The written comments that CAA is submitting today focus on necessary changes to implement the regulations as efficiently and effectively as possible. As we all know, the ambitious target set by SB 54 will require a great deal of time and effort, as well as financial investment.

Our written comments highlight challenges with timing and sequencing that could hinder not only CAA's efforts, but also those of everyone working towards our shared goal of reducing plastic waste and building a more circular economy. We see several opportunities for SB 54 with all parties which ultimately will result in a program that is more cost-effective and more impactful.

Thank you, again, for the opportunity. CAA looks forward to working with the Department as well as everyone participating today both in person and virtually to ensure a successful implementation that will establish California as the world's leader in packaging extended producer responsibility.

Thanks again.

Response to O-112-1

Comment rejected. No substantive response is required for this comment because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. The commenter indicates that these remarks are preface for their written comments; if the commenter did provide this follow-up, the substance of that written comment is addressed in the response to that written comment.

O-113: City of Los Angeles (Christine Batikian)

Comment O-113-1

First, local jurisdictions must have a voice in alternative collection systems operating within our boundaries.· Without our consultation and consent, these systems could duplicate services, confuse residents, and shift costs back to ratepayers contrary to the intent of SB 54.

Response to O-113-1

Comment rejected. No substantive response is required because the comment merely raises a concern about local jurisdiction participation without stating any specific recommendation for revising the proposed regulations.

Comment O-113-2

Second, we urge CalRecycle to remove the categorical exclusion in section 18980.2(a)2.· Packaging that may face federal compliance issues should go through the existing time-limited exemption process, not receive a permanent carve-out.

Response to O-113-2

Comment partially rejected and partially accepted. CalRecycle declines to remove section 18980.2(a)(2) for the reasons provided in response to comments I-19-1 and I-59-2. CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-113-3

Third, the increased cost criteria for covered cost must be clarified.· Jurisdictions that have already invested in SB 54 align systems should not be penalized simply because those costs are not new.

Response to O-113-3

Comment rejected. No substantive response is required because the comment merely raises a concern about cost criteria without stating any specific recommendation for revising the proposed regulations.

Comment O-113-4

Fourth, we urge CalRecycle to require PROs to consult with local jurisdictions before cost-covering recycling service providers to prevent duplicate of payments and protect our ratepayers.

Response to O-113-4

CalRecycle rejects this comment as it is outside of our current statutory authority, and within our authority, the commenter's concerns are already addressed within the existing framework of the proposed regulations. Section 18980.8(g) already requires advance notice to, and discussion with, local jurisdictions regarding the payment of covered costs for recycling service providers. Therefore, no change is necessary to the implementation or enforcement of the Act. Additionally, CalRecycle does not have the authority to dictate how local jurisdictions allocate SB 54 funds or structure their ratepayer calculations, or any authority over ratepayer assessments. CalRecycle cannot lawfully depart from the statutory provisions in Public Resources Code section 42051.1(g) that require payment of costs to local jurisdictions and recycling service providers incurred due to requirements of the Act. The proposed regulation at section 18980.8 is consistent with the statutory text and legislative intent to pay these costs to local jurisdictions and recycling service providers. See also responses to comments O-33-2 and I-51-1.

Comment O-113-5

And finally, we ask that local jurisdictions not be subjected to the same penalty structure as producers.· SB 54 was designed to hold producers accountable, not to impose $50,000 per day fines on public agencies acting in good faith.

Response to O-113-5

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements set forth in the Act, including in sections 42060, 42060.5, and 42081 of the Public Resources Code, and the recommended change is not necessary to the implementation or enforcement of the Act. Section 42081(a)(1) provides that CalRecycle may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars ($50,000) per day

per violation on, any entity not in compliance with the Act or any of the regulations adopted to implement the Act. Section 18980.13.2(a) of the proposed regulations implements this statutory provision by specifying that any entity, including a local jurisdiction, not in compliance with the Act is subject to penalties pursuant to section 42081(a). However, section 18980.13.2(c) further clarifies that penalty determinations will be made by the CalRecycle director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c). Therefore, while section 18980.13.2(a) preserves flexibility for CalRecycle to assess penalties of up to $50,000 per day per violation against a noncompliant local jurisdiction consistent with statutory authority, that is a maximum amount and CalRecycle will always make its penalty determinations based on the factual factors and evidence identified in section 18980.13.2(c). The penalties assessed against a noncompliant local jurisdiction will necessarily often be far less than the maximum amount of $50,000 per day per violation that is allowed under section 42081(a)(1). No further changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

O-114: Coalition for Protein Packaging (Teri Grill)

Comment O-114-1

I'm Teri Grill, and I'm representing the Coalition for Protein Packaging.

So on behalf of the coalition, I want to commend CalRecycle for its balanced and thoughtful approach in these draft regulations.· By recognizing the unique challenges of protein packaging, you've shown a commitment to ensuring public health and food safety as nonnegotiable priorities.

We especially appreciate that CalRecycle has prioritized food security.· Protein is a foundational part of the California diet.· And by aligning packaging rules with federal standards, you're helping to ensure that fresh protein remains available, affordable, and safe.

Your reliance on federal law and agencies like the USDA and FDA is a strength.· It demonstrates humility and foresight in acknowledging the agencies' expertise limitations in these very specialized areas of packaging.· In doing so, CalRecycle has created a stable, less litigious framework that consumers and producers alike can trust.

Looking ahead, we encourage CalRecycle and the PRO to recognize industry associations as eligible applicants for market-based exclusions and exemptions. This would simplify compliance, reduce redundancy, and ensure the policies are applied consistently across the protein sector.

Finally, we want to thank CalRecycle for its collaborative approach throughout the process.· This willingness to work with stakeholders builds trust, and it sets a strong foundation for successful implementation of SB 54.

Response to O-114-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-115: Monterey Bay Aquarium (Amy Wolfrum)

Comment O-115-1

My name is Amy Wolfrum.· I am Monterey Bay Aquarium's director of California policy.

The proposed regulations undermine the laws, source reduction, producer responsibility, and pollution prevention strategies by authorizing illegal categorical exclusions for over-the-counter drugs, food and agricultural packaging, and secondary packaging associated with the excluded and exempted products.

Today I want to specifically address the proposed regulations exclusion of packaging associated with over-the-counter drugs.· The statutory language and legislative history of SB 54 are clear.· Only drugs that require a prescription are categorically excluded from 54's requirements.

CalRecycle understood this, and that's why the regulations that were previously proposed did not exclude them based on the plain language in the statute, the legislative history, the primary author's statements and clear intent, and previous versions of implementing regulations.· Packaging for over-the-counter drugs are within the scope of the law.· CalRecycle's attempt to now exclude over-the-counter drug packaging through regulation is contrary to the law.

We will be submitting comments later today with more detail to support our urging that the regulations be amended to restore the inclusion of over-the-counter medication.· Thank you

Response to O-115-1

Comment partially rejected and partially accepted. With respect to over-the-counter drugs, CalRecycle rejects this comment for the reasons provided in response to comment O-49-1. Regarding the assertion that the proposed regulations contain "illegal categorical exclusions" for food and agricultural packaging, CalRecycle rejects that assertion for the reasons provided in response to comments I-59-2 and I-19-1.Regarding secondary packaging, CalRecycle rejects the commenter's assertion for the reasons stated in response to comment O-13-3 and because, with respect to packaging excluded pursuant to Public Resources Code section 42041(e)(2)(A), that provision is clear that it

applies to packaging used with the products, and Public Resources Code section 42041(s)(2) and (3) expressly provides that "packaging" includes secondary and tertiary packaging.

CalRecycle accepts this comment with regard to food and agricultural packaging, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-116: Monterey Bay Aquarium, Oceana, and Ocean Conservancy (Jennifer Fearing)

Comment O-116-1

Thank you very much.

My name is Jennifer Fearing.· I'm here today on behalf of Monterey Bay Aquarium, Oceana, and Ocean Conservancy.

And while we will be providing comprehensive comments throughout today and in writing, I just want to focus on one aspect of our concerns with the regulations as proposed.· And I also want to just state up front how important it is to our organizations that 54 work to achieve its ambitious goals.

But the piece I'd like to focus on is the categorical exclusions section that is new to this version of the proposed formal regs.· That's section 18980.2.· We believe that to be unnecessary, unlawful, and undermining of SB 54's overall objectives.· And it could threaten to tank the entire program for a number of reasons.

The first is its permanence.· The fact that it's a categorical exclusion means it will be considered once and done, and that will thwart innovation.· And also, like, that's not something SB 54 ever envisioned was to permanently eliminate any packaging or food ware item through -- from the program.

The determination -- the way the regs are written, the determination of exclusion is being made by the producer and then puts the onus on CalRecycle to evaluate or disapprove.· There are at least eight problems with this.

First, the volume is likely to be very high, because this is not about covered material.· This is about a specific component.· There are many components. I don't know why producers won't be motivated, given the bar and the fact that they get to claim -- make -- claim their own determination of exclusion.· Very concerned about the volume of applications to CalRecycle here being very high.

That begs the question of who will pay for CalRecycle's evaluation of every one of these determinations?· And our read is since they are out of the program by the entity's own determination, it seems unlikely that the PRO will pay for that evaluation.· And that leaves it on taxpayers, which seems highly incongruent with the objectives of this law.

Thirdly, the timeline that's laid out in the regulations.· Any entity that claims the exclusion probably has up to the better part of a year to being out of the program, even if on its face it's an item that does not -- that there is clearly a compliant material for that component.

Again, that will -- that has a reinforcing impact on the volume, because there is sort of a no downside to a producer deciding to make that determination and enter that process.· Seems to be a very inefficient use of CalRecycle staff time to be reviewing what could be a voluminous amount of applications.

Fifth, the uncertainty.· This seems this will create enough uncertainty to make the PRO plan very difficult, if not impossible, to develop accurately.

Sixth, the low bar included in the regulations of inclusion of federal guidelines.· I mean, it seems obvious that it would be very easy for the Feds to change guidelines, especially with producers lobbying them to do so.· Which again, seems like a circular opportunity here to see a lot of components and packaging removed from this program permanently.

And lastly, and I raised this at the last SB 54 advisory board meeting, there is a stark incongruity here that CalRecycle sees the need to explicitly create this problematic exclusion process to address -- what's said is address 54's direction to avoid conflicts with federal law while waving a hand at the repeated calls to explicitly ensure that the regs and any infrastructure to implement the law don't negatively impact disadvantaged communities.

There's nothing explicit in the regs that do that.· Meanwhile, we now have this explicit provision aimed at addressing a similar type of direction in the law at the request of producers.

So for these reasons, we would strongly urge CalRecycle to strike section 18980.2 entirely. Thank you.

Response to O-116-1

Comment partially rejected and partially rejected. The commenter proposes that CalRecycle remove section 18980.2 entirely. CalRecycle rejects that suggestion for the reasons provided in response to comments I-19-1 and I-59-2. Even if the objections raised in this comment were meritorious, they would not counsel removal of that entire section; the comment only specifically addresses section 18980.2(a)(2), not the rest of that section. Regarding disadvantaged communities, CalRecycle declines to make changes because Article 4 of the regulations already incorporates robust protections against end markets that harm the environment, which ensures that disadvantaged communities are not negatively impacted. Moreover, to obtain an exemption for covered material under section 18980.2.4, applicants must address impacts on disadvantaged communities. Also, as specified in section 18980.8(c)(7), producer responsibility plans must assess such impacts. Lastly, various statutory provisions impose requirements for producer responsibility plans and implementation related to protecting disadvantaged communities, and the regulations establish that a producer responsibility plan will not be approved unless all such requirements are met. See, e.g., section 18980.8(a) and 18980.6.2(a).

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. The revisions significantly ameliorate or eliminate the commenter's concern over durability of exclusion claims, the potential for abuse and high volumes of submissions, uncertainty, and the regulation's reference to "guidelines." See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-117: Natural Resources Defense Council (Renee Sharp)

Comment O-117-1

Hi.· I'm Renee Sharp, a senior scientist with the Natural Resources Defense Council.

I already see we'll be submitting detailed comments later today that cover many issues that we see with the prepared regulations, including the fact that the definition of categorically-excluded materials is overly broad and narrows state law impermissibly.

The definition of disposal and permissibly narrows the application of key definitions in the statute.· CalRecycle must provide additional guidance on how the PRO is to implement the few provisions of SB 54 that relate to toxic chemicals to give meaning to

the statute's requirements.· And recycled content and recycling rate accounting requirements should be made clear and prevent greenwashing.

Response to O-117-1

CalRecycle rejects this comment for the reasons provided in response to comments O-62-1, O-62-2, O-62-4, O-62-5, and O-62-6.

Comment O-117-2

Given our limited time here, I want to underscore one specific issue.· Which is that the proposed language addressing chemical recycling is inconsistent with the law and undermines the statute's legislative intent.

There are many issues with the proposed language as it relates to chemical recycling, including defining significant amounts of hazardous waste based on the concept of risk and waste management conflicts with the intent and statutory language of SB 54.· The exemption for compliance with permits further exacerbates these conflicts with the law.

Using the federal definition of hazardous waste rather than the California definition does not comport with the law.· The definition of recycling for technology as other than mechanical recycling relies inappropriately on a nonbinding ISO standard. Infrequent reporting of facility-level information could allow skirting of thresholds for significant amounts of hazardous waste.

And CalRecycle should include a definition of recycling in the regulations that categorically exclude specified chemical recycling technologies and reflect SB 54 language and legislative history.

So we'll provide, of course, much more detail in our comments that we'll be submitting very shortly. So just wanted to say thank you for your careful consideration of our comments, and we hope to see changes in the proposed regulations as they become finalized.· Thank you.

Response to O-117-2

CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

O-118: Olli Salumeria (Sarah)

Comment O-118-1

Hi. Good morning. My name is Sarah, and I work with Olli Salumeria.· We make salami. We are USDA-regulated. And we would like to know what are steps we can take in order to gain an exemption? I'm aware that in the August 2025 proposed regulatory texts, there were provisions for facilities regulated by, you know, the Federal Meat Inspection Act, USDA. So just curious to hear what you guys have to say about that.

Response to O-118-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-119: Physicians for Social Responsibility (Tevin Hamilton)

Comment O-119-1

Hello.· My name is Tevin from Physicians for Social Responsibility, Los Angeles.· And I'm also here with EJCAP, Environmental Justice Communities Against Plastics.

First off, I kind of want to uplift the comments that Nick made earlier about the chemical recycling ramifications.· As an environmental justice -- we're a coalition of environmental justice communities that represent the California communities who are most impacted by the life cycle of plastic.· Our coalition includes Just Transition Alliance, Pacoima Beautiful, PSR-LA, Black Women for Wellness, and I'm missing -- I'm blanking on the last one.· But -- oh, Valley Improvement Projects.· Thank you.

So the chemical recycling ramifications impact our communities a lot more than the other ones do. We're the ones who pay the brunt of the front line of what the impact of the life cycle really does.

For example, the incinerators that used to be in Pacoima, the incinerator that used to be in Long Beach, the incinerator that used to be in Modesto, it really impacts our communities.· And though those facilities have closed down thus far, they still have long-lasting impacts on our community.

We also want to express our deep concerns that we've been engaging in this process for several months. This is my first time making comments here in person, but I have said several things over the course of months in the public comments written as the coalition.

We have made comments on the SB 54 advisory board about how these regulations are written really could give us harm.· Would cause us long-term harms over the entire duration of SB 54.· And everything it's trying to do is in direct violation of the statute, and we do not agree with what's going on with the regulations.

So the section that I'm really most interested in is the responsible end market section.· And we're really concerned about how the producers are basically able to regulate themselves.

And what I mean by that is about what is, like, substantial compliance between our permits and their laws.· Allowing their producers to really determine for themselves what can be an acceptable form of recycling gives them free range to potentially put in harmful impacts that will impact our communities.

So the pyrolysis plant that was potentially going to happen from Resynergi is an example of some of the risks that could happen.· Yes, that project has transitioned and shifted to somewhere else.· But those are the type of projects and type of technologies we don't want to risk coming back into California, especially in our communities.

When these facilities are going to be pumping -- deciding for locations, they're going to put them in the communities that could fight back and have the least amount of resources to really put up a fight against those type of billion-dollar corporations.

So we really urge CalRecycle to really tighten up the regulations in an effort to really make sure that these chemical recycling technologies are banned explicitly.· Because if you don't, you're really putting the communities that are most impacted in harm more than they already have been historically.

It's kind of ironic that this law generates funds to, kind of, reduce the harms and impacts and mitigate some of the harms of plastic.· But it's also still feeding into that system, so it's a never-ending loop.· So there's no point in just, kind of, putting money into a system that you're also putting money into worsening going forward.· So thank you for your time.

Hello.· Can I be heard?· Hello. My name is Tevin, again, from Physicians for Social Responsibility, Los Angeles.· And also with Environmental Justice Communities Against Plastics, or EJCAP.

I just kind of want to point out the trend that several people today, either in the room or online, brought up the technology sections and the chemical recycling ramifications.· I just urge you all to really hear these pleas.

Because these communities, a lot of people really care about this issue.· And you're sending a clear message that you don't care about our concerns, our EJ communities, if you allow the regulations to go as they are written now.

So I just really want to urge you to really put in the effort and ask you to work in good faith with EJ communities and all the concerns that are uplifted from the people in this room and online about how these harm our communities and how this can cause long-lasting impacts across California.· Thank you.

Response to O-119-1

CalRecycle rejects this comment's suggestion that "chemical recycling technologies" be banned outright in the proposed regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. Additionally, PRC section 42041(aa)(2)(B) expressly excludes incineration from

the definition of "recycling," and nothing in the proposed regulations contradicts that exclusion.

CalRecycle also rejects this comment for the reasons stated in response to comment O-62-1.

O-120: Surfrider Foundation (Miho Ligare)

Comment O-120-1

Good morning.· My name is Miho Ligare.· I am Surfrider Foundation's senior manager for plastic pollution initiative.

I'm also the ocean advocacy representative on the advisory board, and I'm honored to be serving in this capacity.· And just to be clear, these comments on behalf of the Surfrider Foundation do not reflect the views of the advisory board.

First off, a huge thank you to CalRecycle staff for your commitment and hard work in developing the regulations.· We'll also be submitting a more detailed letter, but our main comments for today are dealing with articles 2 and 4, refill and reuse systems, mitigation funds, and implementation and enforcement of the State-led expanded polystyrene food ware prohibition.· Many of my comments are comments made already by the Environmental Justice Communities Against Plastics, Californians Against Waste, CALPIRG, and others.

Response to O-120-1

No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-120-2

Starting with article 2, we are also concerned about the potential loophole through the exclusions.· As it's currently written, it is too broad and will make this law ineffective.

With such a wide swath of categorically excluded materials, it seems like the PRO is set up to fail as it will be underfunded and there will be an unfair burden on those participating in the PRO.· This also means that it will be harder to meet source reduction targets, as there are fewer producers.

And finally, it will also have a ripple effect on refill and reuse and creating an equitable system, as there will be fewer incentives and funding from the PRO to transition from disposable packaging to refill.

Response to O-120-2

Comment accepted. CalRecycle interprets this comment to generally object to the scope and effect of section 18980.2(a)(2). CalRecycle has revised that regulation to clarify its scope or effect, made clearer what renders it "not reasonably possible" to resolve conflicts with federal laws, and more clearly limit its scope to minimize the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-120-3

In regarding article 4, I am deeply concerned about chemical recycling and want to reinforce the current regulation as clearly and critically at odds with the SB 54 statute.

The focus of management of waste through permits and the production of significant quantity of hazardous waste as to the generation of waste, which is in statute, is a significant shift away and opens the door for chemical recycling and is very problematic. SB 54 language refers to the amount of hazardous waste, not the risk associated with it.· And these are clearly different standards.

So we'd like to see the alignment with the statute and regulations in the form of a categorical prohibition of chemical recycling technologies as envisioned in SB 54's requirement that California, or CalRecycle, excludes plastic recycling technologies that produce significant amounts of hazardous waste.

And if the State is seeking to reduce cost in this program, chemical recycling is not the answer.· The estimated minimum sales price for chemical recycling is 70 to 80 times as expensive as mechanical recycling.

Response to O-120-3

CalRecycle rejects this comment's suggestion that "chemical recycling technologies" be banned outright in the proposed regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology.

CalRecycle also rejects this comment for the reasons stated in response to comment O-62-1.

Comment O-120-4

And moving on to refill and reuse.· We also heard from over 50 California-based ocean-friendly restaurants who are also part of a national Surfrider program of over 600 ocean-friendly restaurants that without adequate standards for reusable and refillable packaging, it will make it harder for businesses to implement reuse and refill systems in an affordable and effective manner.· Broad exclusions for more types of products will stifle innovation and cause confusion for business owners without lowering the price of sustainable alternatives.

Response to O-120-4

Comment rejected. Regarding adequate standards for reusable and refillable packaging and the implication that product exclusions should be narrowed, the commenter does not describe changes sought with enough specificity for CalRecycle to evaluate whether changes to this provision are appropriate. No changes to the proposed regulations are necessary to the implementation or enforcement of the Act.

Comment O-120-5

And regarding concerns about the mitigation funds, there's concerns around the process and how to ensure that the funding will go to the communities most burdened by plastic pollution.

Although the mitigation funds will be allocated through the legislative budget process and aren't addressed in these regulations, I think it's still critical to ensure that environmental justice and tribal representation is adequately made throughout the SB 54 implementation process.· And there's clear processes established and understanding of how the mitigation funds will be allocated.

So we encourage CalRecycle to hold public workshops throughout the state on this topic and dedicate a web page to helping the public and communities understand the mitigation fund, timeline, and process to access funding.

Response to O-120-5

CalRecycle rejects this comment. See the response to comment O-45-2.

Comment O-120-6

And then, finally, we appreciate CalRecycle's work to create a web page along with FAQs and sending out notices with additional information regarding expanded polystyrene food ware to producers.· However, we'd like to see CalRecycle provide more enforcement beyond education and assistance.

We'd also like to see more transparency regarding how and who CalRecycle is reaching out to in providing compliance for support.· For example, what's happening with the CalRecycle's online notification portal?· We'd like to see a little bit more information about that.

And then finally, producers who were unable to demonstrate to the Department that the polystyrene recycling rate was unable to be met on January 1st, 2025, should not have the opportunity to come back in the future attempting to show that they met the target recycling rate, even though the target is shifting.

There is concern that this will increase focus on the false recycling or advanced recycling of expanded polystyrene at the cost of our communities and the environment.

And so thank you so much for your time, and I look forward to the continued engagement.

Response to O-120-6

CalRecycle rejects this comment. The portion of the comment regarding general information, transparency, FAQs, notices which are being provided, and the commenter's request to see more enforcement beyond education and assistance does not necessitate a response as it is outside the scope of regulations, and further, the comment does not propose any specific regulatory language to achieve their concerns. Further, regarding enforcement, there is nothing in the regulations indicating that CalRecycle will not investigate potential violations, issues notices of violation, or in general exercise the Department's statutory enforcement authority, and as such, no changes or additions to the regulations are necessary. Finally, the portion of the comment regarding producer demonstration requirements is already addressed in section 42057(i) of the PRC with sufficient specificity, including the statutorily required demonstration dates and percentages, such that the regulations do not require any additional clarifications, nor does the Department have the authority to change said statutory requirements.

O-121: West Contra Costa Integrated Waste Management Authority (RecycleMore) (Cliff Feldman)

Comment O-121-1

Good morning.· Cliff Feldman, executive director of the West Contra Costa Integrated Waste Management Authority, AKA, RecycleMore.· And I just have a couple of questions, but a few comments regarding the current regulations leading up to those questions.

It is clear that in chapter 3, article 1, the fundamental role of local jurisdictions, also construed as ratepayers, is crystal clear and being the backbone behind this entire system.· It is also clear that the intent is to shift the cost burden of implementing the regulations from the producers away from the local jurisdictions, which would normally take place.

So questions that I have are pertaining to what controls are in place to ensure those fundamental premises are kept intact?· That the producers are held accountable for the costs, and not the local jurisdictions?

Well, we applaud the advanced notice to local jurisdictions by the PRO before funds are distributed. And we certainly applaud transparency.· Neither advanced notice nor transparency will be adequate.· In fact, those are abundantly inadequate to ensure that the integrity of the making the fundamental intent of the law is maintained.· And that fundamental intent includes keeping local jurisdictions financially whole.

Where this regulation falls woefully short is that it does not prescribe that it will be illegal by service providers and recipients of PRO funds to also seek reimbursement from local jurisdictions for those costs.· In addition, if any operational savings or process improvements are accrued via the funds paid by the PRO, how will the local jurisdictions be kept whole for those expenses as well?

So in essence, the questions are pretty simple.· Where in these current regulations is it expressly illegal that service providers or recipients of the PRO cannot also seek reimbursement of costs paid by the PRO from the local jurisdictions?

And secondarily, where in these current regulations is it expressly illegal that the recipients of the PRO funds cannot benefit further and not pass along those savings via reduction of cost of operations or increased commodity revenue or a host of other process improvements in order to ensure the fundamental intent of the law in keeping the ratepayers financially whole is maintained?

Those are my simple questions, and I look forward to the Agency's responses.· Thank you very much.

Response to O-121-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-51-1.

O-122: 350 Bay Area Action (Judy Sorre)

Comment O-122-1

Hi.· My name is Judy Sorre, and I'm a volunteer and a legislative advocate with 350 Bay Area Action.

We're concerned about several revisions to the latest draft regulations, especially weakening protection against the chemical recycling, sometimes called advanced recycling.

In the language of SB 54, recycling does not include combustion, incineration, or fuel production, and it says it should minimize environmental and public impacts.· Chemical

recycling essentially is incineration and fuel production, and it does have environmental impacts.

In addition to the CO2 emissions and pollution produced by the making of many plastic products, this so-called recycling just adds more emissions.· Toxins, such as dioxins and heavy metals which are carcinogens and neurotoxins, are often admitted during the process.

Chemical recycling is also very energy-intensive.· It's primary product is, from 86 to 99 percent, will be burned.· And the secondary product polymers, about 1 to 14 percent will be down-cycled into another plastic product.

Pyrolysis and gasification can produce from 55 to over 200 percent more greenhouse gases than mechanical recycling.· Economically, plastic production by chemical recycling is between one to ten times more expensive than plastic -- making plastic from virgin materials.

Few chemical plants are operational in the US, and they are heavily subsidized.· Two plants have multi-million dollar lawsuits against them.· Oregon's plant, Agilyx, received over 577,000 in tax credits, but it closed within 16 months.

In Rohnert Park, Resynergi is trying to open a -- it's actually a microwave technology for incineration of plastics.· They've come upon a lot of community action against them, and it appears that they may be pulling out of California.· They have had too many hurdles to jump over with public backlash, regulatory hurdles, difficulty permitting, and they need more environmental incentives.

So this advanced or chemical recycling is not advanced.· It is not a solution, and we should avoid it. We need to enforce the intent of SB 54 to reduce the amount of plastic we are producing, find safe ways to recycle it and discard it, and protect our environment, health, and future.· Thank you.

Response to O-122-1

Comment rejected. With regard to chemical recycling, SB 54 does not expressly forbid chemical recycling, so the regulations cannot lawfully do so, either. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology. Regarding combustion, incineration, and fuel production, PRC section 42041(aa)(2)(B) expressly excludes those from the definition of "recycling," and nothing in the regulations contradicts that exclusion. Thus, no further changes are necessary to the implementation or enforcement of the Act.

O-123: Alliance with Family Farmers (Jennifer Fearing)

Comment O-123-1

Great.· Thank you for allowing me to comment again.· I have another client with a different perspective I wanted to share.

Jennifer Fearing on behalf of Community Alliance with Family Farmers.· We are an organization that represents over 8,000 California smallest and most vulnerable family farmers, and have worked for over 47 years to preserve family-scale agriculture and promote environmental sustainability, work closely with growers throughout the state to build healthy soils, and expand markets for high-quality compost.

While CAFF broadly supports California's world-leading effort to curb the growth of single-use packaging and plastic food ware framework, we believe that SB 54's extended producer responsibility framework has the promise to reducing costs to residents and businesses, negative impacts on public health, and environmental degradation.· SB 54 can and should incentivize packaging and food ware producers to source-produce materials and to shift to materials that are reusable, recyclable, or compostable.

As 54 continues to be implemented, CAFF wants to urge CalRecycle to support the need for California's compost to remain a strong, responsible end market by keeping it free of packaging and food ware that does not break down, leaches toxic chemicals or additives, or breaks down into microplastics.· A strong body of science validates concerns that farmers and composters have about the adverse impacts that such waste will have on compost integrity and consumer confidence in compost created in California.

It's important to note that California's agriculture industry purchases well over two thirds of all compost sold in California, making it the single largest and most promising end market for the material. Use by growers conventional and organic alike hinges on product quality.· And we cannot risk introducing contaminants that jeopardize crop safety, farm certifications, or brand reputation.

I could go on.· I just want CAFF to be on the record here.· And then we will be in writing as well that compostable plastics in our farmers' consideration do not offer any nutrient value.· They often contain toxic additives, and they frequently fail to fully degrade, leaving behind microplastics that harm soil health and plant growth.

So we urge -- we align our comments with Neil Edgar's of the California Compost Coalition as their -- as a primary customer of that.· And the end of that, kind of, circular chain, please protect this responsible end market by retaining the way the regs currently treat compostable products.· And don't expand them to inflict compostable plastics into this end market, causing all kinds of problems.

Thank you.

Response to O-123-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-124: American Forest and Paper Association (Terry Weber)

Comment O-124-1

All right.· Terry Weber, American Forest and Paper Association.· We are the national trade association for America's paper mills and, importantly, the paper-based packaging manufacturers.

We represent about 90 -- 70 million tons of production capacity.· Also importantly, we recycle about 46 million tons of paper every year at our mills.· So we'll be submitting detailed written comments covering all of our issues.· But just a couple I'd like to highlight in verbal comments.

You know, it's been said, but it – the exemptions that are written into the legislation were really important from the perspective of our industry. And it's important that CalRecycle honor the legislative language through the regulation.· And we feel like the draft regulations are still falling short in a couple of areas.

Response to O-124-1

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-124-2

One exemption that's really important to our industry is the exemption for source-separated material that can demonstrate a recycling rate of at least 65 percent until 2030.· And then it goes to 70 percent.

Right now as the regulations are drafted, it reads as though individual producers would need to document that their specific box, for example, flows through the collection system and it is recovered at a rate of 65 to 70 percent.

Practically in the real world, that is not going to be possible.· It's not a question that's going
to be knowable.· Our industry has a lot of experience in these statistics.

We'd prefer to see an approach that's based on covered material category.· We can substantiate that the
recycling rate for boxes that flow through commercial collection source-separated by store typically have a recycling rate of about 95 percent.· So well in excess of the thresholds met in the -- met in the -- stated in the legislation.· We need the regulations to reflect a process that allows us to access the off-ramp as was negotiated in the legislature.

Response to O-124-2

Comment rejected. The statutory provision at issue, Public Resources Code section 42041(e)(2)(H), unambiguously requires demonstration that the material to be excluded from the definition of "covered material" fulfills certain criteria (stated in clause (i) of that provision). The Legislature unambiguously drafted this exclusion to concern "covered material" (i.e., material to be excluded from the definition of that term) for which a person is the producer, not a "covered material category." Accordingly, to the extent the commenter's proposal of an express "covered material category" approach would mean entire categories would be excluded from the definition of "covered material, that approach would not be lawful. Also, to the extent the commenter's reference to what was "negotiated" was intended to argue that stakeholder discussions with legislators are relevant, that position is legally wrong. It is axiomatic that the text of a statute controls its meaning; and, even if wording of statute is ambiguous and requires interpretation, the context established elsewhere in the statute and, if necessary, legislative history may be relevant, but legislative history encompasses debate within the legislature and evaluations of the bill by the legislature, not informal discussions with stakeholders. Lastly, the commenter's concern is overstated because the proposed regulation does not expressly require reliance on the statistics the commenter claims will not be available. Any statistics that can establish satisfaction of the statutory requirements, as interpreted via regulation, are sufficient. So, if the commenter is correct that statistics can "substantiate" a recycling rate for a particular "boxes," that substantiation would be considered for purposes of the exclusions under 42041(e)(2)(H).

Comment O-124-3

·And then the second piece that's really important to our membership that Dawn just mentioned is the exemption around de minimis.· So right now, what we're being told and was, you know, in the draft guidance that CalRecycle issued in late August around plastic source reduction is that we need to report the adhesive content of our boxes.

And there's -- it's not really clear in the regulatory package, you know, the legislation by CalRecycle with the authority to decide what constitutes de minimis.· It's not clear how that process is going to work.· And what our members are being told by Circular Action Alliance right now is that they have to report all that data, CAA will apply for an exemption, and then CalRecycle will decide whether the de minimis qualification is met.

Well, that's an enormous amount of regulatory and reporting cost for our membership to undertake for -- to report data that will ultimately, from a regulatory standpoint, be meaningless.

So we feel very strongly that in order to be consistent with the governor's intent as he stated in pulling back and rewriting these regulations, that CalRecycle needs to take a look at that de minimis exemption and offer some guidance, and clear guidance, about what is going to qualify as de minimis.

And that needs to be done ahead of time so that we don't have to go through this tremendous data-gathering exercise to report data that's ultimately, from a regulatory standpoint, going to be meaningless.

Response to O-124-3

CalRecycle rejects this comment for the reasons provided in response to comments I-62-27 and O-65-9.

O-125: Biodegradable Products Institute (Alex Truelove)

Comment O-125-1

Thank you, everybody.· This is Alex Truelove with the Biodegradable Products Institute, or BPI.

I wanted to focus our comments today on the responsible end market language as proposed by CalRecycle.· We are concerned that the individual compostable items are specified to have different end market requirements, even though they're composted together typically along with all the organic waste that
they help divert.

We're also concerned that the compost facilities as the end markets in this situation are not required to provide the conditions necessary to responsibly process those covered compostable products into a -- well, excuse me -- the stable and mature finished product.· In other words, the responsible end market language for compostables as written doesn't seem to require anything of the end market itself.

I'll start with the term "biologically decompose."· This continues to be applied in a way that is unclear, unsupported, and undefined despite our request to remove this term.· The ASTM standard that support compostable products, D6400, D6868, already required by California law provide clearly defined and scientific criteria for both disintegration and biodegradation, which are defined terms.

The latter references, of course, conversion to CO2 that can only be measured in a lab.· So we're here, again, with this term "biologically decompose" that feels unnecessary and problematic.

In the same section, the regs also do not require certain paper and fiber-based items to fully break down, even if they contain persistent polymeric additives.· Which brings up another important point.

Response to O-125-1

CalRecycle rejects this comment. See the response to comment O-83-5.

Comment O-125-2

The term "polymer" needs defining.· It's listed in the definitions, but not actually defined alongside the term "plastic."· Plastic and polymers are different.· They're related.· And this is needed to clarify existing labeling law coming from AB 1201.· But it's also needed to close a dangerous loophole that I fear is being exploited in this very section of the regs.

Response to O-125-2

CalRecycle rejects this comment for the reasons provided in response to comment B-14-2.

Comment O-125-3

To back up for a second, to put this as plainly as I can and in response to some of the comments I heard earlier, the suggestion that a product being made primarily of paper or fiber or being made primarily of plastic determining its compostability is just a scientifically-bankrupt position.· It's not supported by science.· It's not supported by law.

There are compostable paper and fiber-based items, there are non-compostable paper and fiber-based items.· There are compostable plastic items, there are non-compostable plastic items.· And of course there are products made from all different kinds of material combinations.

What is clear is that truly compostable products in California, regardless of material this is true across the country, are held to the same standard. Including for toxicity, which I think was referenced earlier as well.· Same laboratory methods, same pile conditions, and they've been verified over and over and over again.

I fear that CalRecycle is confusing market preferences, which, of course, are real.· And they're an important consideration for composters as a substitute for science.· I'll say that again.· CalRecycle should not confuse market preferences as a substitute for science.· But unfortunately, that appears to be where we are.· This is in the same world where we're seeing food waste being collected in conventional plastic polyethylene bags as allowed by California law.· Tell me how that makes sense?

Response to O-125-3

Comment rejected. This portion of the commenter's submission states general objections but does not set forth a discernible recommendation for changes to the proposed regulations (it is not even clear what regulatory provisions are even

at issue), so no response is required. To the extent any response is required, CalRecylce notes that the statute incorporates the provisions from Public Resources Code sections 42355 through 42358.5 for the criteria for what is eligible to be labeled "compostable." The commenter is therefore incorrect to say that the law does not consider whether material is paper or fiber, as opposed to plastic, relevant; section 42356.1(d) creates an exemption based on that distinction. To the extent the commenter's general suggestion that all products be "held to the same standard" ignores that distinction, CalRecycle rejects the suggestion on that basis. CalRecycle also rejects the commenter's suggestion because it appears to be based in part on how responsible end markets are identified under section 18980.4 of the proposed regulations, not the proposed regulations' treatment of the criteria for being eligible to be labeled "compostable." The latter relates to compliance with Public Resources Code section 42050(b), whereas the former concerns whether processing at the end market can be considered "recycling" and is irrelevant to the standards that apply for being eligible for being labeled "compostable."

Comment O-125-4

Speaking of science, to ensure that compostable products are given the opportunity to break down and that they go to a responsible end market, we need to ensure that facilities are capable of responsibly processing those products of all material types.

We recommend that CalRecycle consider the recently published field testing methods, ASTM D8618 or 8619, which offer methods for evaluating compost operation and applying operating parameters like minimum residence time, curing time, pot and moisture content.

We think it's more than reasonable that composters who wish to participate, of course, and receive funding through EPR should, according to this method, submit a test report and prove that their finished compost is stable, mature, and ensure that they're capable of responsibly processing compostable products.

Response to O-125-4

Comment rejected. The commenter suggests that CalRecycle "consider" certain recent publications, without submitting the publications themselves and without advocating for any particular outcome to CalRecycle's consideration of them. Accordingly, CalRecycle cannot respond specifically to that recommendation. Regarding the more general suggestion that composters should be required to submit test reports regarding the quality of their finished compost, no revision is appropriate because the proposed regulations already expressly require covered material included in composting operations to fully biologically decompose, and the recycled organic product must meet marketplace standards, which is the threshold established in Public Resources Code section 42041(aa)(1) for what can be considered "recycling."

Comment O-125-5

So in summary, we should hold both compostable products and composters to the highest standards. Compostable products are already required to be tested and certified.· And we have this broad sweep of labeling requirements that are enshrined in California law.

So let's meet in the middle here.· Let's avoid frameworks that betray the statute, and let's not assume that performance is based on material origin.· And instead, follow the science and the law.· Look forward to submitting written comments, and thanks for the time.

> **Response to O-125-5**
>
> Comment rejected. The comment only makes vague suggestions but does not suggest specific changes to the proposed regulations or raise objections related to the rulemaking process. To the extent other portions of the submission do suggest changes or raise objections, CalRecycle has responded to those portions separately.

O-126: California Compost Coalition (Neil Edgar)

Comment O-126-1

Good morning.· Neil Edgar on behalf of the California Compost Coalition.· My comments reflect those of my composter members.· They're not on behalf of the SB 54 advisory board.

Despite assertions from producers, CCC has no desire to limit or ban compostable packaging.· In fact, California compost manufacturers are receiving and processing hundreds of tons of food, soil, paper, and f iber every day.

Bioplastic materials, however, are not functional in collection and composting systems at the scale of services being delivered by commercial operators in California.· California composters have decades of experience in working with the jurisdictions they serve trying to make compostable plastics work and have learned many costly lessons about how they don't.

We fully understand the difference in manufacturers have sunk -- the difference between the investment manufacturers have sunk into making functional packaging for delivering food to consumers safely.· And what is functional at the end of life in composting facilities that are relied upon to manage that waste?

My members operate composting facilities that have invested millions of dollars in environmental compliance measures and must meet the demands of their primary agricultural markets to manufacture the highest value compost products they can in order to meet very ambitious revenue targets.· Food service ware and packaging

marketed as compostable presents significant challenges to compost manufacturers that impair its ability to function as a circular solution.

There are contamination impacts.· Removing contamination from compost during the manufacturing process is job number one for composters.· Quite simply, we need to keep plastics out of compost.· Plastic contamination, including from bioplastics which meet lab biodegradation standards in ASTM D6400 represent the largest threat and processing cost to compost production.

As SB 1383 collection programs have increased in number and volume, the costs of removing increasing plastics contamination has risen significantly.· ASTN marketing standards require materials that 90 percent disintegrate maybe for days and 90 percent biodegrade within 180 days.· Those standards do not reflect the production cycles for commercial composters who must move a finished product to market within 90 days.· Any partially degraded visible plastic is very difficult to remove and will devalue the compost.

We have a lack of proper labeling and enforcement.· California has adopted labeling standards for compostable products under AB 1201.· Existing statutory requirements found mainly in Public Resources Code 42357(g) are not being enforced.· A large proportion of these products sold in California are not clearly labeled, causing confusion for consumers and adding cost unnecessarily as they are typically disposed of following costly removal.

Consumer confusion is leading to higher costs and contamination.· Compostable plastics are often confused with conventional disposables, which they are often designed to mimic, leading to contamination in both the compost and recycling streams, increasing processing costs for ratepayers and customers, and reducing the marketability of material due to the physical contamination resulting from the acceptance of packaging at large with food materials.

While fiber and paper compostable products come with their own potential contamination challenges, composters have not found nearly the level of impact on product quality that comes with plastics.

It also creates a permission structure for increasing contamination.· Despite signage and other education, many users lost in the confusion of multiple products, resin types, and conflicting messages carelessly throw all food-associated packaging into their green bin, leading to the need for mechanical separation which wastes additional food and increases cost for processing.

Compostable plastics are not allowed in certified organic agriculture and are not desired by farmers.· California farmers buy over 60 percent of our compost and want product that is allowable for use in certified organic agriculture as a means of assuring quality.· Under the National Organic Program rules, plastic is considered a synthetic product, which is not allowed even if it's compostable.

Toxicity and microplastic concerns are emerging.· Some compostable products still contain harmful chemicals like PFOS, which do not break down during composting and can contaminate soil and water. Other polymers and chemical constituents are also concerning.

While the science and understanding of microplastics is emerging, there is evidence that in the absence of specific composting conditions, moisture content, adequate temperature, et cetera, some of these compostable plastics generate microplastics like their conventional plastics they mimic, causing all of the same environmental damage to soil and impairment of plant function.

We will be submitting comments to largely support the existing language under section 18980.3, the eligibility to be labeled compostable, and 18980.4, which defined responsible end markets for compostables.

Lastly, we'll be asking for a reinstatement of a definition of desirable organic waste, which is referenced in these sections.

Thank you for the opportunity to comment.

Response to O-126-1

Comment rejected. No substantive response to this comment is required because it does not directly address the proposed regulations or suggest changes to them. The comment refers to a suggestion that the commenter intended to (and presumably did) submit regarding "desirable organic waste," but this comment itself does not put forth that recommendation. To the extent the commenter separately submitted comments suggesting any changes to the proposed regulations, CalRecycle has responded to them separately.

O-127: California Restaurant Association (Matt Sutton)

Comment O-127-1

There's been no shortage of news coverage over the last few years in the state newspapers and national newspapers about the challenges that the restaurant community faces, particularly the affordability crisis that restaurant operators everywhere in the state continue to face.

So restaurants are the end users of many of these products that we're talking about today and have talked about for years in this context.· So we know that by its very nature, an extended producer responsibility program is going to send some costs downstream to us.

That's acceptable.· It's normal.· We want to be incredibly delicate with that.· We're real about those coming down to us as end users.· But we just can't stress enough the need

and the fragility of the restaurant community right now and the need for that to be done delicately.

So our comments today will be submitted. They're going to offer more context and clarity on a number of fronts.· I'll keep it brief here, because I know what stands between you and lunch is probably me.

So at this time we're focusing on some suggested clarity around the issue of, quote, unquote, obligated producer.

We've become aware of a number of scenarios where the process of identifying who is or who may be obligated producer is rife with opportunity for multiple and conflicting interpretations.· So we have some suggestions to clarify that.

And we believe by doing that, it will significantly cut down on the administrative load that you all face, or CalRecycle faces, and certainly that the CAA will face.· Also, we think it will reduce confusion and questions coming in to you from our members about a wide variety of scenarios.

Response to O-127-1

Comment rejected. This comment expresses concern over the clarity of the provisions of the proposed regulations concerning producer identification. However, this comment only previews the commenter's more detailed, separate submission of comments on that topic; this comment itself does not discuss the regulations in detail or propose any clarifications or other changes to the proposed regulations, so no response is required here.

Comment O-127-2

Lastly, we're offering some suggestions so as not to exacerbate the current dilemma we already face with the organic and compostable packaging limitations so that compostable packaging and packaging in food service ware can remain a meaningful compliance pathway for restaurants and for all.

Response to O-127-2

Comment rejected. No substantive response is required for this comment because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations. The commenter indicates here that it will be providing more specific comments elsewhere; if the commenter did provide this follow-up, the substance of that comment is addressed in the response to that comment.

O-128: CALPIRG (Emma Moorhead)

Comment O-128-1

I don't want a future where myself and my kids are constantly exposed to microplastics.· And the beautiful, natural environment that we're really lucky to experience in California is filled with plastic trash everywhere.· So there are two specific problems that we urge CalRecycle to resolve before finalizing the proposed regulations.

Similarly as colleagues of mine have spoken on before, first we urge CalRecycle to not weaken the protections against chemical recycling, which is a false solution to our plastic pollution crisis.· The process is polluting and energy-intensive and does nothing to stop the production of new single-use plastics.

Response to O-128-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. CalRecycle further rejects this comment to the extent it may be recommending that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology.

Comment O-128-2

And second, we urge CalRecycle to remove the new FDA USDA exclusions.· Without these changes, I really do worry that this law will not do what it was intended to do and what those thousands of students worked really hard to pass.· We want to significantly limit plastic pollution and set the stage for a cleaner and healthier California.

So thank you so much, and thanks for the opportunity to comment.

Response to O-128-2

Comment partially rejected and partially accepted. CalRecycle interprets this comment to request removal of section 18980(a)(2). CalRecycle rejects that request for the reasons provided in response to comment I-19-1 and I-59-2. CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes).

That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-129: CALPIRG (Felix Bolton)

Comment O-129-1

Hello.· I am Felix Bolton.· I'm a student at UC Santa Cruz, and I live -- I am from Santa Monica and I'm representing CALPIRG, the student activist group at -- across the UCs.

I am here because the equivalent of a dump truck of plastic goes into the ocean every 45 seconds. The US plastics industry was responsible for at least 232 million tons of CO2 emissions, gas emissions, in 2020, equivalent to an average emissions of 116 average-sized coal-fire power plants.

The current regulations do not protect against harmful chemical recycling, which is mostly just a new term for incineration.· Chemical recycling creates toxic pollutants that harm our environment and threaten public health and doesn't reduce demand for new plastic to be created.

Response to O-129-1

CalRecycle partially accepts and partially rejects this comment and comments O-129-2 and O-129-3 as a group, as described in response to comment O-110-2, which is substantively the same as the group of comments.

Comment O-129-2

Also, the current regulations unlawfully exclude new broad categories of products, food and agriculture products, over-the-counter drugs, for example, which will result in more plastic being sent to landfills or left to pollute our environment.

Response to O-129-2

CalRecycle partially accepts and partially rejects this comment and comments O-129-1 and O-129-3 as a group, as described in response to comment O-110-2, which is substantively the same as the group of comments.

Comment O-129-3

CalRecycle should strengthen the regulations so that only real recycling technologies are allowed in our state, not chemical recycling.· CalRecycle should not allow for broad exclusions of packaging for over-the-counter drugs and food and agricultural products, but instead institute an exemption process.

Response to O-129-3

CalRecycle partially accepts and partially rejects this comment and comments O-129-1 and O-129-2 as a group, as described in response to comment O-110-2, which is substantively the same as the group of comments.

O-130: CALPIRG (Quinn)

Comment O-130-1

Hello.· My name is Quinn, and I'm with CALPIRG.

I grew up in Norway, and there's a lot of agriculture and nature there.· Growing up, I kind of came to understand the importance of our environment.

And when it comes to our legislation, we need to take into mind how, like, the final decision will impact our environment.· And burning plastics will add tons of toxicity to the air, which will not only harm the wildlife but also hurt us in the long term.· So I think it's really important to remember this when making a decision.

Response to O-130-1

CalRecycle rejects this comment. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment may be suggesting that the proposed regulations allow for the incineration of plastic, PRC section 42041(aa)(2)(B) expressly excludes incineration from the definition of "recycling," and nothing in the regulations contradicts that exclusion. To the extent this comment may be recommending that "chemical recycling" be banned outright in the regulations, see the response to comment O-128-1.

O-131: CALPIRG (Ty)

Comment O-131-1

So my name is Ty.· I live in Santa Cruz, and I'm with CALPIRG.

And I am here to -- I care about reducing plastic in our environment.· Because there's an equivalent of a dump truck of plastic that goes into the ocean every 45 seconds.· And the plastics industry is responsible for billions of tons of CO2 and gas emissions.· And it's equivalent to, like, hundreds of coal-fired power plants.

And current regulations do not protect against chemical recycling, which is mostly just a new term for incineration and creates toxic pollutants that harm our environment and threaten public health.

Response to O-131-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent this comment might suggest that "chemical recycling" be banned outright in the regulations, a complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. Additionally, PRC section 42041(aa)(2)(B) expressly excludes incineration from the definition of "recycling," and nothing in the regulations contradicts that exclusion. No change is necessary to the implementation of the Act.

Comment O-131-2

And a new plastic ban needs to be created. The current regulations unlawfully exclude new broad categories of products like agricultural products and over-the-counter drugs, which will result in more plastic being sent to landfills and polluting our environment.· Thank you.

Response to O-131-2

CalRecycle partially rejects and partially accepts this comment. With respect to over-the-counter drugs, CalRecycle rejects this comment for the reasons provided in response to comment O-49-1. Regarding the suggestion that a new plastic ban needs to be created, that recommendation is not relevant to the proposed regulations, and the Act does not authorize CalRecycle to create a "plastic ban." Regarding exclusion of agricultural packaging, CalRecycle rejects the assertion that the regulations "unlawfully exclude" it for the reasons set forth in response to comment I-19-1. However, CalRecycle accepts this comment to the extent it asserts that section 18980.2(a)(2) (implementing the exclusion) was unclear or could result in exclusion of packaging that does not actually conflict with federal law or for which alternatives are available. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-132: Central Contra Costa Solid Waste Authority (David Krueger)

Comment O-132-1

Thank you.· I'm David Krueger, executive director of the Central Contra Costa Solid Waste Authority.

And the communities that we serve very much support the intent of SB 54, particularly the intent to shift the costs of recycling from the local governments and ratepayers to the producers.· And also, the intent stated in SB 54 that there won't be any new costs on local governments, because it wouldn't be recovered from the PRO.

However, I think the regulations as written are lacking some important language to make that happen. We're submitting four comments, but I'm going to highlight this one section here.

Some of what's lacking is a requirement that service providers actually participate in the EPR program.· That might sound odd, but it's actually already happened in other California programs.· We've seen it with the mattress recycling PR program where some service providers had refused to participate because it would prohibit them from charging the public.

We've also seen recently with CAA and CalRecycle trying to survey service providers to get the baseline data needed for this process, and many of them have opted not to comply.· So I think there is a need for the regulations to require the service providers to seek the funding.

The concern is that if the service providers have new costs necessary to meet SB 54 and they perceive it's going to be easier for them to get that funding from the ratepayers from the local jurisdictions as opposed to from the PRO, that that's where they'll go first.· So I think there needs to be a regulation to make sure they participate.

Response to O-132-1

Comment rejected. The commenter's recommendation is, in effect, that the proposed regulations impose requirements directly on service providers to participate in the PRO's program. Nothing in statute, however, confers authority on CalRecycle over recycling service providers other than with respect to their obligations under Public Resources Code section 42060.5(a) (the requirement to include certain covered materials in their collection and recycling programs).

Comment O-132-2

And when they do participate, as mentioned by other folks, we need to look out for the possibility of double-dipping.· Of a service provider recovering costs from the PRO and then recovering those same costs from the jurisdictions and the ratepayers.· That needs to be prohibited in law and regulation.

And you can't really rely on local jurisdictions and franchise agreements to enforce that. Doing so would put an unnecessary burden on local jurisdictions, especially the smaller ones that don't have lots of staff and so forth, and that is this type of thing.· And might also require a mass -- you know, a minimum of franchise agreements throughout the state, which is not really a productive use of time.

So most of the current franchise agreements didn't really anticipate SB 54 and EPR.· And instead of having everyone have to rewrite their franchise agreements, it would be more efficient for the State simply to enforce these requirements to prevent the double-dipping.

Response to O-132-2

CalRecycle rejects this comment for the reasons stated in response to comment I-51-1.

Comment O-132-3

In addition to double-dipping, we want to make sure that when service providers get funding from the PRO that actually reduces their operating costs, that their customers benefit from that as well.· That that savings is shared with the ratepayers with the local jurisdictions.
Anyway, thank you for listening to these comments.· I appreciate your time.· And thanks again. Bye.

Response to O-132-3

CalRecycle rejects this comment for the reasons stated in response to comment I-51-1.

O-133: Environment California (Caleb Weiss)

Comment O-133-1

Great.· Yeah, hi.· My name is Caleb Weiss, and I'm a campaign associate for Environment California based in Oakland.

I've cared deeply about the environment since I was a kid growing up in the woods of northern Vermont. However, I never imagined that we would reach a point when protecting our environment would be so intertwined with protecting ourselves.

The statistics about microplastics' impact on health are downright scary.· And when coupled with the terrifying amount of plastic waste that we currently produce, 2,000 truck loads per day, provide more than enough reason to significantly limit our plastic consumption as SB 54 sets out to do.

Therefore, I would like to state my strong opposition to recent provisions which both allow chemical recycling under certain circumstances and implement broad exclusions of packaging for over-the-counter drugs, food, and agricultural products.

Both of these practices would significantly threaten the efficacy of SB 54.·

Response to O-133-1

CalRecycle partially rejects and partially accepts this comment and comments O-133-2 and O-133-3 as a group for the reasons stated in response to comment I-44-1, which this commenter also submitted and encompasses the concerns and recommendations set forth in the group of comments.

Comment O-133-2

Chemical recycling creates toxic pollutants that harm our environment and threaten public harm, and it does not reduce our demand for new plastic to be created, which seems kind of crazy for a recycling policy.

Response to O-133-2

CalRecycle partially rejects and partially accepts this comment and comments O-133-1 and O-133-3 as a group for the reasons stated in response to comment I-44-1, which this commenter also submitted and encompasses the concerns and recommendations set forth in the group of comments.

Comment O-133-3

Meanwhile, broad exclusions for over-the-counter drugs, food, and agricultural products will result in more plastic being sent to landfills or left to pollute our environment.· I urge you, therefore, to strengthen SB 54 regulations so that only real recycling technologies are allowed in our state.

Furthermore, I ask that you ensure that packaging for over-the-counter drugs and food and agricultural commodities are fully covered by the regulations.· Thank you.

Response to O-133-3

CalRecycle partially rejects and partially accepts this comment and comments O-133-1 and O-133-2 as a group for the reasons stated in response to comment I-44-1, which this commenter also submitted and encompasses the concerns and recommendations set forth in the group of comments.

O-134: Environment California (Layla Sharp)

Comment O-134-1

Good morning.· My name is Layla Sharp.· I work with Environment California as a clean air and water intern.

On behalf of Environment California, I urge CalRecycle to strengthen the regulations under SB 54 so that only real recycling technologies are allowed in our state.

This is our opportunity to make California a national leader in real solutions to plastic pollution by not allowing loopholes and false solutions to undermine the intent of SB 54.·

Allowing chemical recycling is worse than creating new plastic in many ways.· It is similar to plastic incineration that releases toxic chemicals in our air and water.

These facilities are often built in low-income neighborhoods and communities of color, adding to the environmental injustices that these residents face every day.· I grew up in southeastern parts of San Diego where pollution became normalized, and communities like mine were often overlooked when it came to environmental protections.

During heatwaves and wildfires, the air would hang low and thick with smoke.· And by the age of 16, I would have migraines at least twice a week during wildfire season.· My family accepted it as it was normal, and no one and no community should have to accept this in their home.

Far too long, families like mine have lived with the consequences of weak environmental policies. Policies like SB 54 are supposed to protect them from these kinds of harms, not make it worse.

I ask CalRecycle to keep SB 54 strong and to not improve anything that fails to represent the best intent of California residents.· Ban chemical recycling and hold producers accountable to ensure the final regulations truly reduce plastic as a source and not shift the burden onto communities already breathing air pollution.

Now we have the chance to protect public health, clean air, and environmental justice across California.· Please do not let weak regulations take that away.· Thank you for your time.

Response to O-134-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology.

O-135: City of San Jose (Reit Voorhees)

Comment O-135-1

Thank you.· Good afternoon. My name is Reit Voorhees, and I'm speaking on behalf of the Environmental Services Department for the City of San Jose.

As the third most populous city in California, we are highly supportive of SB 54, the goals of reducing plastic pollution, shifting the packaging responsibility to producers, and lessening the financial burden on most local jurisdictions, waste collection, and processing of covered materials.· We are -- we have submitted extensive comments

already, but I do want to highlight a few concerns that we have about the written regulations.

Response to O-135-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations, does not raise an objection concerning the rulemaking process, or refers to suggested changes or objections set forth in greater detail in other portions of the submission. To the extent other portions of the submission suggest changes or raise objections, CalRecycle has responded to those portions separately.

Comment O-135-2

We strongly believe that section 18980.2, meaning section (a)2, which significantly expands the number of products that would be category 3 excluded, must be deleted.· If it's not removed, it would directly conflict with statute and result in the failure of the State to implement SB 54 as retired by statute.

Instead of just expanding the proposed regulations, this continues to allow producers to apply for the unique challenges exemptions outlined in section 18980.2.4.· Relying on exemptions instead of broadly applicable exclusions would require these producers to remain part of the SB 54 system and create a safe pathway for producers to onboard materials as it becomes feasible to do so.

The (inaudible) that CalRecycle published in June 2025 estimates that the total benefits of SB 54 are over $53 billion.· However, this estimate assumes that SB 54 is implemented as intended by the State of California.· If a large percentage of the products that are currently required to be covered by statute pursue categorical exclusions under the proposed regulations, these benefits, public health, reduced environmental impacts, and savings for taxpayers would not be realized.

Additionally, SB 54's intent to reduce the f inancial burden on ratepayers would also be unmet as many types of packaging intended to be covered under SB 54 would be categorically excluded from all current (inaudible) requirements to meet SB 54's recycling rates and recyclability mandates.

Response to O-135-2

CalRecycle partially rejects and partially accepts this comment. For the reasons set forth in response to comments I-19-1, I-59-2, and O-93-9, CalRecycle rejects the suggestion to remove section 18980.2(a)(2) and instead rely on exemptions described in section 18980.2.4. However, CalRecycle accepts this comment to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions

responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-135-3

I wanted to echo some of the concerns that are already been mentioned about enforcement on local jurisdictions.· The $50,000 per day fine for noncompliance, we believe there's discrepancy between SB 54's intention as an EPR law and the enforcement on local jurisdictions for those requirements.

Response to O-135-3

CalRecycle rejects this comment for the reasons stated in response to comment O-15-7.

Comment O-135-4

And we also wanted to highlight that SB 54 requires the PRO to reimburse local jurisdictions and service providers for cost incurred to implement SB 54. And that includes the cost of consumer education, collection, processing, storage, and transportation of covered materials.

However, under the current regulations, the cost for that same type that are already being incurred by jurisdiction, it only allows us to cover the amount of increase that's caused by the requirements of SB 54. Separating both costs that are due to the existence of SB 54 would prove extremely difficult and incredibly burdensome for jurisdictions.· This language in the regulation should therefore be (inaudible) be left.

And I will thank you for the time and consideration.· We look forward to working with CalRecycle as they continue to draft these regulations. Thank you.

Response to O-135-4

CalRecycle rejects this comment for the reasons stated in response to comment O-13-14.

O-136: Global Alliance for Incinerator Alternatives (Sirine Rached)

Comment O-136-1

Thank you.· Hello.· Sirine Rached here, speaking for the Global Alliance for Incinerator Alternatives.· We're a global network of over 1,000 grassroots groups in over 90 countries working for a shift towards a just zero-waste world.

Thank you for this opportunity.· We've been engaging in this process, and apologies for any repetition in our comments.· But unfortunately, our main concerns with the regulations have not been heard so far.

I will make some -- I will highlight some points that we are making in further detail in our written comments which we will be submitting in a few hours.· And before I begin, I just want to echo concerns raised by colleagues of the environmental justice communities against plastics like Californians Against Waste, by the NRDC, and the Surfrider Foundation among others.

So the first point I want to make, we've heard that chemical recycling is incineration by another name. I would go further and say pyrolysis is actually incineration under the Clean Air Act, and it fits with California's definition of incineration.

And pyrolysis being the main chemical recycling technology currently deployed, that means that so-called chemical recycling, in between quotation marks, is actually not recycling at all.· It is disposal, and it should not be a technology that sees any growth as a result of these regulations.

The second point I'm going to make is that a prohibition or a moratorium on plastic waste pyrolysis, gasification, solvolysis, depolymerization, and solvent-based purification -- these are a family of technologies that are commonly marketed as so-called chemical recycling -- would best uphold the statute, and I'll explain why.

The third point I'll be making is that these technologies actually have unacceptable climate and toxic impacts, which are inconsistent with the statutory definition of a responsible end market.· So another reason not to authorize them.

And finally, I will make the point that the regulations responsible end market criteria ignore the statutory emphasis not only on preventing harm, but on environmental benefits.· And on preventing the generation of hazardous waste, not simply managing whatever hazardous waste has been generated in compliance with permits.· Furthermore, it fails environmental justice by failing to give any protections against cumulative impacts.

So coming back to the point that pyrolysis is incineration in federal law and in California law.· This clarity in the law comes in contrast with the claims that we are hearing from sections of the industry that present these technologies as recycling.

Terms you may have heard include "advanced recycling" or "chemical recycling."· And as you may be aware, California's attorney general has filed a lawsuit alleging, with ample evidence, that these technologies are not recycling at all.· And they are described by the attorney general as deceptive business practices.

And this is why these regulations, in our view, are absolutely essential in providing the clarity and reinforcing the law and in providing clarity in the face of these claims that

threaten genuine mechanical recycling with technologies that actually don't result in a significant amount of plastic waste coming back into new products.

So pyrolysis and associated processes actually burn off most of the plastic waste.· They also produce a low-yield and highly contaminated oil, pyrolysis oil, that needs dilution with large amounts of virgin petroleum naphtha to become usable.· Okay?

This means that in the best care scenario, only 2 percent of the plastic waste that we are feeding into this pyrolysis process, so-called chemical recycling, will make the round trip into a steam cracker and effectively be recycled.

So really, we really insist on the importance of having a prohibition, or at least a moratorium, on this family of technologies, pyrolysis, gasification, solvolysis and the others in order to uphold the statute.

Furthermore, let me jump to the -- now some evidence on these costs.· Why am I saying that the climate and toxic costs are not compatible with the statute?

The statute does say -- again, it doesn't only say minimize the harm.· It says we need -- responsible end market means a material market that is conducted in a way that benefits the environment and minimizes risk to public health and worker health and safety.· However, this evidence that we are presenting in detail in our letter negates that.

So, first of all, life cycle assessments when probably conducted actually show that chemical recycling has a significant toxic footprint from the use of solvents.· And this toxic footprint, which is often not considered in the literature, is actually also responsible for a large amount of the carbon footprint from these technologies.

The hazardous waste issue that relates to chemical recycling is not only at the facility itself, but across all the lines, transportation lines, where this waste must be transported until final disposal at a hazardous waste facility, as our colleagues at the NRDC have shown in a very good investigation.

And as some of you may recall who like to read ProPublica, this investigative outlet showed that the EPA estimated a 100 percent cancer risk from lifetime exposure to pollution from a boat-fuel component that is made through the pyrolysis of plastic waste.· They also showed at a separate facility that the EPA estimated a one-in-four cancer risk for people exposed to pollution from this facility over a lifetime.

And, of course, that is relevant because lifetime exposure is what happens when you live next to a facility.· It is constant, daily exposure that accumulates to this unacceptable cancer risk.· We don't see how this is consistent with statute at all.

On the greenhouse gas, as I mentioned earlier, part of this footprint is due to the solvent use. Chemical recycling is a major emitter of carbon, and has been found to produce

carbon emissions an order of magnitude more than mechanical recycling, and more emissions per ton than primary plastic.

So chemical recycling of plastic produces more carbon per ton than making new virgin plastic.· Again, we don't see how embracing chemical recycling in the regulation makes any sense, given California's climate commitments.

Finally, I'll just conclude here to say that we really are concerned that the regulation does not provide any protection for environmental justice, despite the requirements and statute.

And specifically, it brings no safeguards against cumulative impacts when several end markets or several recycling facilities might be located in the same community.· And the only mention is significant compliance or rough compliance with the permit.· This doesn't address the harm from the accumulation of polluting facilities in one location.

And finally, one point that is really dear to GAIA's heart given our work on environmental justice on a global scale, California exports a lot of its plastic waste beyond its borders, including to Mexico and Asia. And the language in the regulation provides no -- no protection for countries where environmental regulations are insufficient.· And compliance with permit does not constitute a safeguard for human health and the environment.

So thank you for your patience, and we will be providing further detail in our written comments.

Response to O-136-1

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the regulations. A complete ban on any technology could have been accomplished through straightforward, specific language that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology.

O-137: McHugh Koepke Padron (Dawn Koepke)

Comment O-137-1

Okay. Good afternoon, or good morning, I guess, still.

Dawn Koepke with McHugh Koepke Padron providing comments on behalf of two clients, if I may. First, the California Manufacturers and Technology Association. Appreciate the opportunity to provide these comments on this updated proposed permanent regulation. A few things, all of which will be included as part of our robust comments to be submitted later today. And I'll just touch on a couple of high points.

With regard to section 18980.1(a)8. This is related to the definition of food service ware. CMTA and its members continue to have concerns about the definition and the lack of clarity. That it suggests in terms of who is considered the producer for that food service as it relates to reference to good versus food packaging, food service, and specifically concerns about ambiguity when it comes to the manufacturer of that actual packaging versus who puts it into commerce by use and providing it to consumers. So continue to have concerns about that.

Response to O-137-1

CalRecycle rejects this comment for the reasons provided in response to comments O-76-2 and O-76-6, which were submitted on behalf of the same entity on whose behalf this comment was submitted and address the same issues. See, also, CalRecycle's response to comment O-55-1.

Comment O-137-2

[This comment code not used.]

Response to O-137-2

[Intentionally left blank.]

Comment O-137-3

With regard to the definition of plastic in 18980.1(a)15.· CMTA also just notes and has concerns that certainly the regulatory definition of plastic is incredibly broad.· And in that regard includes everything from your traditional plastics to even coatings and adhesives that provides potentially significant compliance challenges, particularly for fiber-based materials.

That broad scope could complicate producers' ability to accurately identify, separate, and report plastic content.· And so a lot of concerns about that. CMTA has continued to recommend the use of the de minimis reference within the statute to set a threshold for considering that.

Sorry.· It's, like, so low. Okay.· Thank you.· Sorry about that.

Response to O-137-3

CalRecycle rejects this comment for the reasons provided in response to comments O-55-1 and O-82-7.

Comment O-137-4

So in terms of the de minimis reference within the statute, CMTA continues to believe it would be important for added clarity and to avoid ambiguity to further clarify and refine what de minimis means in the context of the regulations for plastics as specifically recommending setting a threshold.

Further, in section 18980.2.2(b), defines criteria to meet that de minimis standard.· However, this section requires added clarity on how it applies to adhesives and coatings on packaging that are primarily composed of recycled materials.

Response to O-137-4

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comments B-30-2 and O-82-7.

Comment O-137-5

A couple of additional points regarding detachable components.· We continue to have a bit of concern.· And it seems as though, based on the detachable components, components within the regulation, that there could be a lack of alignment with the Association of Plastic Recyclers' design guides, which recommend leaving plastic caps on bottles and containers
when recycling.

Response to O-137-5

CalRecycle rejects this comment for the reasons provided in responses to comment O-39-5 and O-41-3.

Comment O-137-6

Further, kind of, similar situation, we note that the department as well as the – Sorry.· Should I just continue? I feel like it's even cutting in and out on my end, too.

So we would note that the department as well as the beverage industry have been working on a campaign
focused on keeping caps on when returning beverage containers for recycling. · And we think that the detachable components language within the regs needs to align with that for the broader universe of packaging as well.

Response to O-137-6

Comment rejected. This comment does not provide a discernible proposal of a change to the regulations for CalRecycle to consider. To the extent the commenter intended to suggest that components should not be considered "detachable" when the instructions on packaging requests that the components be discarded attached to others component, CalRecycle rejects that proposal for the reasons stated in response to comment O-39-5 and O-41-3.

Comment O-137-7

We strongly support the inclusion -- or, exclusion for over-the-counter drugs and urge CalRecycle to maintain this important exclusion in the final approved regulation.· As we've previously discussed, these medical products, which were exempted in statute and included as part of FDA's review and requirements. And we think that it is important that that exclusion be maintained in the final regs.

Response to O-137-7

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-137-8

With regard to reusable and refillable, CMTA strongly supports maintaining the change in that section to avoid applying uniform requirements to the design and labeling of reusable and refillable packing regardless of the significant differences in packaging, recognizing that there are changes and differences that should provide for flexibility.

Response to O-137-8

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-137-9

In terms of the exemption duration, we strongly support maintaining the change and exemption from one year to two years, which provides longer period for certainty for producers who may be granted exemptions.

Response to O-137-9

Comment rejected. No substantive response to this portion of the commenter's submission is necessary because it does not suggest a change to the proposed regulations or raise an objection concerning the rulemaking process.

Comment O-137-10

On the post-consumer content credit, although SB 54 requires CalRecycle to determine a 2023 baseline for purpose of measuring overall source reduction, it should be clear that nothing in Senate Bill 54 itself requires CalRecycle to adopt a 2023 baseline for purpose of determining this credit.· I really believe greater flexibility would be helpful and important.

Response to O-137-10

CalRecycle rejects this comment for the reasons provided in response to comment B-11-7.

Comment O-137-11

On the malice fee section, as CMTA also urges the Department to add language recognizing that under the office of -- environmental health hazard assessment and Proposition 65, there are thresholds set for various chemicals under Prop 65.· And the malice fee should be accordingly and aligned with those level settings and address that issue as part of malice fee determinations.

Response to O-137-11

CalRecycle rejects this comment. See the response to comment B-11-9.

Comment O-137-12

And then finally, on behalf of the California Council for Environmental and Economic Balance, CCEEB urges the department to provide added clarity and guidance on business-to-business related packaging for producers.

They continue -- many producers who may not be consumer-facing producers for the purposes of SB 54 but who may, indeed, have obligations for compliance are largely focused on business-to-business transactions and packaging within their business-to-business, still are continuing to struggle with a lack of clarity as it relates to the producer definition, that hierarchy, what have you.

Response to O-137-12

Comment rejected. As written, the proposed regulations provide ample clarity concerning when businesses that are not "consumer-facing" (a term CalRecycle understands to refer to the users that acquire products at the end of the supply chain) may be producers. As explained in greater detail in response to comment O-38-1, the statute does not distinguish between sales to businesses and sales to individual consumers. To the extent the commenter intended to request that CalRecycle publish additional resources, such as a "frequently asked questions" document, to assist businesses in understanding their obligations, no change to the proposed regulations is necessary because a regulation is not required for CalRecycle to create such resources.

Comment O-137-13

And so we really urge the Department to continue to work on providing added clarity through additional guidance, frequently asked questions, FAQs, and to ensure all entities that have compliance requirements, even if they're not consumer-facing packaging, are clear and understand what that entails.

Response to O-137-13

CalRecycle rejects this comment for the reasons provided in response to comment O-137-12.

Comment O-137-14

On the issue of alternative collection, CCEEB urges the Department to further revise the definition of alternative collection.· Continue to have concerns that as it relates to that, that it could have an impact and undermine franchise agreements that were not part of any kind of agreement under SB 54.· The intention was always
to uphold franchise agreements and the important contracts related to those.

Response to O-137-14

CalRecycle rejects this comment for the reasons provided in response to comments B-40-2, B-42-1, and O-42-7.

Comment O-137-15

In terms of responsible in-markets and responsible in-markets for plastics, CCEEB supports the revisions made to the regulation related to whether material recovery facilities creating flake or pellet are considered end markets.· So really just want to ensure added clarity.

While we appreciate some of that language was adjusted, we do believe that there continues to be a little bit of ambiguity as it relates to having removed flake, but continuing to maintain pellets, pellet manufacturing, or processing in that scope.

Response to O-137-15

CalRecycle rejects this comment. See the response to comment O-57-3.

Comment O-137-16

And then finally, with regard to exemptions and extensions for local jurisdictions and recycling service providers, the regulations state that the local jurisdictions and recycling service providers' obligation to collect material on the CMC list do not take affect while CalRecycle is deciding on an application or an extension or exception.

To align this with the eyesore sections on the topic, the final statement of reason should clarify that a request to the Department pursuant to those sections is a notification of the intent to file an application. That application would meet the criteria under 18980.11.1 and be considered by CalRecycle for approval or denial.

This clarification would ensure that the consultation process with the PRO as required serves its intended purpose and local jurisdictions and recycling service providers are not subject to penalties during that consultation process, which the PRO has discretion to extend.

With that, I appreciate your time.· And thank you for your consideration

Response to O-137-16

CalRecycle rejects this comment for the same reasons stated in response to comments O-57-5 and B-42-3.

O-138: Monterey Bay Aquarium (Karla Garibay Garcia)

Comment O-138-1

My name is Karla Garibay Garcia. I'm with the Monterey Bay Aquarium.

I'd like to first echo the comments from others related to the environmental justice concerns with hazardous waste generation technologies.· But my comments today are focused on SB 54's goal to reduce plastic production at the source.

Response to O-138-1

CalRecycle rejects this comment. To the extent this comment raises environmental justice concerns with hazardous waste generation technologies, see the response to comment O-62-1. To the extent this comment alludes to source reduction goals under the Act, no response to this portion of the commenter's submission is necessary because the issues raised in it have been addressed in response to other portions of the submission discussing the same issues.

Comment O-138-2

Monterey Bay Aquarium and our colleagues at Oceana and Ocean Conservancy appreciate that the proposed regulations maintain the integrity of the source reduction mandate.· The removal of the source reduction adjustment language from prior versions of the regulations is critical to effectuate the intent of the law.

The requirement to source-reduce plastic-covered material by no less than 25 percent by January 1st, 2032, was fundamental to our organization's support of SB 54.· And it was carefully negotiated as part of withdrawing the ballot initiative.

Neither the Department nor the PRO have the statutory authority to adjust the amount of plastic-covered material that is required to be reduced relative to the baseline.

So with this in mind, we urge CalRecycle to ensure that the final regulations do not include a source reduction adjustment factor, as any effort to change the source reduction mandate in the regulation would be unlawful and ultimately undermine the clear intent of SB 54.· Thank you.

Response to O-138-2

CalRecycle rejects this comment as there is no substantive response required because the comment raises general concerns without stating any specific recommendations or objections to the proposed regulations.

O-139: National Stewardship Action Council (Heidi Sanborn)

Comment O-139-1

Good morning.· My name is Heidi Sanborn.· I'm the director of the National Stewardship Action Council, and we advocate for a responsible circular economy.

And I am, along with others in this room including Dr. Brandon, were in -- worked very hard in negotiating SB 54 to be something we could all be proud of.· And I want to reiterate -- there's so many comments that were made today that I don't want to restate.

So I'll just say the comments that she just made about the chemical recycling are very clear in the law that we're not following it in this version of the regs.

Response to O-139-1

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process. To the extent the comment might imply that "chemical recycling" should be banned outright in the regulations, a complete ban on any technology could have been accomplished through straightforward, specific language in the Act that required prohibition based solely on the type of technology at issue. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not merely consideration of the type of technology. CalRecycle also rejects this comment for the reasons stated in response to comment O-62-1.

Comment O-139-2

The comments about the cost to local governments and the cost shift to the producers, we should not have $50,000 fines for local governments.· They've carried the weight all these years, and it's time for the producers to have responsibility.· And that's the way this law was written.

Response to O-139-2

CalRecycle rejects this comment for the reasons stated in response to comment O-15-7.

Comment O-139-3

And I can just say that, you know, my biggest concern about this version of the regulations is that they really don't follow the law.· And if there's one thing that this agency is responsible for, it's following the law.· And the regs should align clearly with the statute.

It doesn't even include discussion about another PRO.· That's in the law.· They're not in there. How can another PRO compete with the existing PRO?· To keep cost down and create competition, which is part of our mantra in this economy.

Response to O-139-3

Comment rejected. Contrary to the commenter's assertion, an additional PRO is addressed in regulations, such as section 18980.1 subd. (c). With regard to the general assertion that the regulations do not follow the law, no substantive response is required because the comment raises general concerns without

stating any specific recommendation or explanation of its objections to the proposed regulations.

Comment O-139-4

Exclusions, that is a whole nother level of not following the law.· You know, we have a member of our working group on SB 54 named Gary Cohen.· He's out of Tennessee and working on packaging there.· He came out of the packaging industry and had 40 years of experience and has submitted a comment that he shared with me.

And that basically he's consulted with other food safety experts who are also 40-year experts in the field, and he has submitted their comments as well.· But I just want to reiterate and uplift one of his comments.

That based on his experience with FSMA, the Food Safety Modernization Act and the HACCP protocols, I believe the draft language could potentially exempt 70 percent of food packaging found in a typical supermarket.

That was not the intent of the law, I can assure you, from the people who were negotiating it. And they're very concerned with how this is going to affect other states and their state, even in Tennessee, rolling out what they're hoping to pass.

And his request was that before finalizing article 2, please pause and consult with qualified food safety experts to ensure that the draft exemptions do not unintentionally undermine the very goals and financial stability of SB 54.· This is like Groundhog Day.· I, and many others, have made many of these comments multiple times before.· But this is like driving a truck through the regulations.

It is going to result, in my prediction, of a lot of litigation on both sides.· The businesses, when they get the bill for actually having to comply with this that are left paying, are going to revolt, in my opinion.· Because why would they want to carry the weight for the 70 percent that are going to ask for an exclusion, permanently exempted from having to do anything?· That's just shameful, quite frankly.· And I'm very disappointed that this is where we are.

While I appreciate the opportunity to comment again, stakeholders are quickly losing faith that thoughtfully-negotiated bills in California can be implemented as they were written.· And I really hope this goes better in the next draft, because I am concerned about what that means for not only California, but for the nation.· Thank you.

Response to O-139-4

CalRecycle partially rejects and partially accepts this comment. To the extent the commenter alleges section 18980.2(a)(2) is unlawful and would permanently exempt packaging and therefore must be deleted, CalRecycle rejects the comment for the reasons provided in response to comments I-19-1, I-59-2, and O-93-9. Moreover, CalRecycle rejects that suggestion because the commenter proposes no alternative approach to account for direct conflicts with federal laws

and regulations, as mandated by Public Resources Code section 42060(b). To the extent this comment incorporates the objections and suggestions made in comments I-33-1 through I-33-3 (the comments to which this comment refers and purports to "uplift), CalRecycle rejects it for the same reasons stated in response to those comments. As explained in those responses, the exclusion at issue is tailored to address unavoidable conflicts with federal laws and regulations; the commenter offers no explanation for the implied assertion that 70 percent of packaging in a typical supermarket might face such unavoidable conflicts. To the extent the commenter's assertions and suggestions are based on the intent of "the people who were negotiating" the Act, CalRecycle interprets that as a reference to people other than legislators and therefore rejects the comment. Discussions occurring outside the Legislature are not legislative history, and therefore are irrelevant to CalRecycle's execution of its statutory obligations, which must be based on the statutory text, relying on legislative history when necessary to interpret it.

However, CalRecycle accepts this comment to the extent the commenter alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws, or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

O-140: Ocean Conservancy (Dr. Anya Brandon)

Comment O-140-1

Hi, there.· Dr. Anja Brandon, director of plastics policy at Ocean Conservancy.

I'm going to focus my comments today on article 4.1 on nonmechanical recycling technologies.· As you've heard from us previously and other groups today, these regulations go beyond what is authorized in the statute by allowing technologies that generate a significant amount of hazardous waste to count as recycling.

And by failing to encourage recycling technologies that minimize the generation of hazardous waste, the generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts per the specific and detailed requirements outlined in section 42041(AA)5.

These regulations propose an unlawful shift from a criteria based on production to the disposition and management of hazardous waste.· Moreover, this criteria is rendered essentially moot by allowing for hazardous waste managed under a permit to not count.

These proposed regulations continue to fail to encourage recycling technology that minimize impacts to people and the planet.· And the ISO standard cited does not speak to these issues.

It's worth noting that the permitting requirements are -- that permitting requirements are not uniform across the country, let alone the world.· Which is why the drafters of SB 54 intentionally drafted language to develop criteria based on production which would create a more level playing field.

As written, these proposed regulations, in effect, give preferential treatment to areas with the least stringent permitting requirements, which directly goes against the Department's statutory requirement in section 42060(d) to ensure that the regulations avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas, which too often are communities that live in or around areas with weak permitting requirements.

Rather than encouraging innovation and system change, these proposed regulations seem to be aimed at
maintaining the status quo.· We encourage CalRecycle to outline a clear and uniform criteria based on the production of hazardous waste, the actual amount of hazardous waste generated, as called for in the law.

We have additional comments on this section, including concerns over the definition of hazardous waste used, as well as a lack of transparency and data on these facilities being shared with the Department and with the public.· We will follow up with more details and encourage you to revisit this section.· Thank you.

Response to O-140-1

CalRecycle rejects this comment for the reasons stated in response to comment O-62-1.

O-141: The Recycling Partnership (Dylan de Thomas)

Comment O-141-1

Thank you so much.· My name is Dylan de Thomas.· I lead state policy work for The Recycling Partnership.· I wanted to start -- and I'm going to do a little weird stance here so I can get down here.

I wanted to thank CalRecycle staff for the incredible amount of hard work and challenging circumstances of trying to get this regulatory package over the line.· And I'm going to share a few comments here, but really we'll have a full robust letter as we typically do later on today.· Like many of the other speakers, I also wanted to echo a fair amount of what some of the other speakers had said.

But wanted to lead with just to -- we want to make sure that we see the impacts of this law being implemented.· And we feel we are aligned with CalRecycle as well as the designated producer responsibility organization that for the implementation to stay on time, we support the goal of adopting the final regulations by Jan 1, 2026.

We don't take this lightly.· We know that there are some real changes that need to happen to the regulations to be able to make the law work into the future.

But we still believe that the regulation, the regulatory package currently before us, should be finalized.· And then immediately following finalization, announce plans for additional rulemaking at the earliest possible time for -- after that regulation adoption occurs.

Response to O-141-1

Comment rejected. No substantive response is required because the comment generally encourages finalization without stating any specific recommendation on content of the proposed regulations.

Comment O-141-2

Okay.· But recognizing that changes may be necessary, we have -- and there would be another 45-day public comment period.· We wanted to highlight some of the top priority concerns that if changes are to be made, that these are the changes that should be focused on.

The first and foremost, echoing a lot of the earlier comments that happens -- that others have said is about the categorical exclusion for packaging that conflicts with federal regulation.· It's going to be highly disruptive to the SB 54 implementation piece.

Our initial suggestion is that the provision, the new provision that was in the most recent regulatory package just be deleted entirely.· There would still be an option to request for a more limited exemption due to unique compliance challenges and/or health and safety concerns.

We feel that this is sufficient to be able to address some of the concerns from other folks in industry that have highlighted for packaging that is necessary to be able to deliver their products to marketplace.· There already is a process in place, and we think that that is robust and necessary.

If you do keep the current approach, then we would suggest a few changes.· Primarily that the exclusions would be limited to two to three years and then require resubmission.· That we require CalRecycle to make rapid rulings and have those rejections be effective immediately so the producer responsibility organization can properly plan and make sure that they're able to reach the robust rates and dates in statute.

We believe there should be an annual deadline for submissions that take effect in the following year and initially 30 days after the regulations are adopted to only allow SB 54 producers to file for exclusions. And also to identify a more objective and measurable standard than, quote, not reasonably possible to use other packaging.

So that way producers are able to identify what packaging they can use and cannot use, and it's not as vague.· It's not -- we also feel, and this is something that we've said a number of times in earlier comments, is that there needs to be greater clarity and a viable pathway for recyclable designations via alternative collection either alone or in combination with local jurisdictional programs as in 18980.3.

We really think that, especially as we were looking at packaging that, you know, if there is good redesign and there's a good focus, especially for challenging packaging to recycle like film and flexibles, that there's going to be innovative collection modalities that are going to have to be implemented.

And we believe that there should be an optimal mix of local and alternative collection, still making sure, of course, materials are going to responsible end markets as defined.· And we think that there needs to be some additional clarity delivered via the next regulatory package.

And one of those suggestions that we're making is that for a local program recyclable pathway, that a local program could include any program included in our PRO contract with a local jurisdiction and their service provider or recycler.

Response to O-141-2

Comment partially rejected and partially accepted. For the reasons provided in response to comments I-19-1, I-59-2, and I-93-9, CalRecycle rejects the suggestion to removed 18980.2(a)(2) in its entirety and instead rely on the exemptions described in section 18980.2.4 (for unique challenges and health and safety exemptions). Regarding annual deadlines and the 30-day period after adoption of regulations with respect to exclusion under the 18980.2(a)(2), a pathway for "recyclable designations," and a "mix of local and alternative collection," CalRecycle rejects those suggestions for the reasons provided in responses to comments O-104-4 and O-104-5, in which this commenter provides greater detail concerning those suggestions. CalRecycle rejects the final suggestion concerning "a local program recyclable pathway" because it is vague; CalRecycle cannot discern what the commenter suggests. However, CalRecycle interprets this comment to be an overview of the comments that the commenter submitted in writing, which are comments O-104-1 through O-104-19; to the extent those comments address the suggestion alluded to in this comment, CalRecycle's responses to those comments apply to this one.

CalRecycle accepts this comment, however, to the extent it alleges that section 18980.2(a)(2) was unclear in scope or effect, was insufficiently clear with regard to what renders it "not reasonably possible" to resolve conflicts with federal laws,

or would have been overbroad in effect due to the potential for the exclusion to be applied despite the conflicts being avoidable. See CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-141-3

Additionally, there's some regulatory language that could be clarified around a -- another designation for recyclability, which would be allowing for the PRO to request CalRecycle designations if there's a reasonable likelihood to satisfy any of the other three SB 343 recyclability criteria within a particular time period, as well as an application process to the director to make sure that if packaging is collected, that it would not reasonably confuse consumers as well as increase contamination in the recycling system.

Response to O-141-3

Comment rejected. No regulation is required for CalRecycle to consider requests from the PRO regarding certain covered materials. Regarding a designation of material as having a "reasonable likelihood to [sic] satisfy any of the other three SB 343 recycling criteria within a particular time period," CalRecycle cannot discern what purpose such a designation could have under the statute, so no change to the proposed regulations is appropriate. Regarding CalRecycle determinations of whether packaging "would not reasonably confuse consumers as well as increase contamination in the recycling system," CalRecycle understands that to be a reference to Public Resources Code section 42355.51(d)(6), which provides that packaging can be deemed "recyclable in the state" if it is part of another program governing recyclability. CalRecycle declines to formalize a process for such determinations because they will only be possible once CalRecycle identifies such a program. More broadly, until such a program exists, CalRecycle cannot create regulations relevant to evaluation of packaging under 42355.51(d)(6) because there are no particular types of packaging and associated issues at which the regulations could be directed.

Comment O-141-4

I also wanted to suggest under the responsible end markets program to look to Oregon, as it is working to finalize its program plan amendment.· And the approach that CAA has put forward before the EQ and its advisory council, the Recycling Advisory Council, which I happen to sit on, although I'm not speaking for that advisory council now, they are currently looking at a third-party designated responsible end market verification process that will have far-reaching effects, as well as impacting California's approach on responsible end markets.

And would encourage CalRecycle in looking at the regulations around responsible end markets to coordinate with Oregon's EQ as well as CAA as they are working to finalize what that third-party verification program looks like -- protocol, rather.

Response to O-141-4

CalRecycle rejects this comment. The proposed regulations are consistent with the requirements of the Act, including PRC sections 42041(aa), 42041(ad), 42051.1, and 42060, and no change is necessary to the implementation of the Act. Consistent with the discretion afforded to the PRO under PRC section 42051.1(c), section 18980.4.1 of the proposed regulations requires a PRO to include in its plan the method by which it will identify responsible end markets. The plan is then subject to review and approval by CalRecycle. Moreover, section 18980.4.2 of the proposed regulations provides that responsible end markets will then be subject to annual compliance audits by an independent third-party and annual verification by the PRO. Therefore, the proposed regulations already strike an appropriate balance between reserving distinct roles for the PRO, CalRecycle, and an independent third-party in identifying and verifying responsible end markets in a manner consistent with the overall structure and intent of the Act. However, consistent with its obligation under PRC section 42060(c), CalRecycle will continue considering the approaches taken by other states with EPR programs for packaging, including Oregon.

Comment O-141-5

And then, lastly, we wanted to suggest to help the universe of producers that are going to be impacted by this program as well as other interested parties that all stakeholders need to prepare for SB 54 implementation.· That CalRecycle prepares additional guidance documents as well as holding informal discussions very quickly on how enforcement of interim recycling rate mandates and related activities will play out, as well as demystifying the 343 labeling standards or the 54 recyclable or compostable mandate.· Just guidance documents, informal meetings.· That's something we've called for for many months now, and hope that CalRecycle is able to do that.

Response to O-141-5

Comment rejected. The comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

Comment O-141-6

And then lastly, we just wanted to say that we understand it's very complicated.· But the negotiated SB 54 law that's in statute did allow for compostable packaging.· And I believe that there should be a pathway, a clear regulatory pathway to be able to evaluate compostables for designation of compostability under 54.

And with that, the rest will be in our letter. Thank you.

Response to O-141-6

Comment rejected. This comment makes general assertions but does not suggest any change to the proposed regulations. To the extent the commenter's suggestion is that the proposed regulations should "allow for compostable packaging," no change is appropriate because the proposed regulations do not prohibit compostable packaging. To the contrary, the proposed regulations directly address the various statutory provisions concerning how packaging can be eligible for being labeled "compostable."

O-142: Valley Improvement Projects (Tom Helme)

Comment O-142-1

Hello again.· Tom Helm.· I'm the cofounder of Valley Improvement Projects, an environmental justice organization.· I'm also the environmental justice representative on the advisory board, but my comments here today are representing Valley Improvement Projects and other environmental justice organizations that I work with.

From an environment justice perspective, we know that the State of California actually recommended that if you want a site-polluting industry like trash incinerators, that you should look to low-income, low-education rural communities.· That even the SOREL report mentions Catholic communities.

A couple years after that report was written, West Stanislaus County, which is about 80 percent Latino area, got one of the, at the time, three trash incinerators in the state of California.· At the time, the city of Modesto and Stanislaus County had one of the earliest volunteer weekly curbside recycling programs in the state.

But after you bring in a facility that makes its money off of burning trash, including plastics, that recycling program was slowly phased out.· This is what happens when you commodify the use of waste to create energy or fuels, basically commodifying the waste.· Then you have an incentive to produce more, and not less. And that is a large concern of what we see in these regulations.

SB 54 itself says that environmental justice communities, disadvantaged communities, communities of color in California are shouldering the burden of plastic pollution in the state and the health effects that come along with it.

So a weak set of regulations, or dragging on the regulatory process, only hurts those environmental justice communities, which is why this is -- I'm taking this last chance on this final day of the regulation comment period to, again, say many of the same comments I've made before, which I know we were asked to not be repetitive.· But it's kind of the only thing I have at this point.· Because all the other comments and from other environmental justice groups have basically been ignored, if not made worse by the newer version of the regulations.

Another major problem that environmental justice has had with similar regulations as these is too much control over the industry itself being regulated, which we see with the PRO and the numerous responsibilities and powers that they have in these regulations and over this process.

Response to O-142-1

Comment rejected. No substantive response is required because the comment raises general concerns without stating any specific recommendation or explanation of its objections to the proposed regulations.

Comment O-142-2

We now see another issue, which is the turning over of some of these rules and definitions to the federal government.· Giving exclusions to too broad of a range of products that, as mentioned earlier, under this current administration could simply be made an exclusion to this process with a memo from the FDA or the USDA. And I think we're all aware that the federal government right now is moving towards deregulating and lessening regulations, despite the cost to human health.

Response to O-142-2

Comment accepted. CalRecycle interprets this comment to be directed at the possibility that a publication other than a mandatory regulation or guideline, such as a "memo," could expand the scope of the exclusions available under 18980.2(a)(2). CalRecycle has revised 18980.2(a)(2) to eliminate that possibility. In particular, 18980.2(a)(2) now clarifies that it concerns only regulations, rules, or guidelines that are mandatory. See, also, CalRecycle's response to comment I-19-1, explaining the revisions responsive to this and similar comments. See, also, CalRecycle's response to comment B-3-1, submitted in response to the second draft of the proposed regulations (the 15-Day Changes). That response further explains how the proposed regulations, as revised, address concerns over the scope and effect of section 18980.2(a)(2).

Comment O-142-3

We also believe that the reusable and refillable language is too vague.· That we could end up with sort of like with the plastic bag ban which gave us thicker, single-use plastic bags.· I don't want to be drinking out of a slightly thicker plastic cup that is still being mass-produced, because it's able to count as reusable and refillable.· And I think as we saw with the plastic bag ban, the industries that are creating these products will gladly take advantage of vague language and regulations.

Response to O-142-3

CalRecycle rejects this comment for the reasons provided in responses to comments B-6-2, I-30-2, B-38-3, O-75-3, and O-48-4.

Comment O-142-4

The responsibility end market section has, of course, been the biggest cause of concern, as I mentioned with the incinerator in our county taking away the incentive to reduce waste.· I feel that that's where we could be headed if these regulations allow for chemical recycling, which use the plastic waste to create fuel.· And that becomes a profit motive.· And that becomes an industry that is going to be promoted, which I think is the exact opposite of what was meant with SB 54.

The original language in the regulations was better.· It set up a rigorous process for comparing these technologies to mechanical recycling and making sure that they're not producing more pollution.· And that language was taken out when we were told the language had to change to reduce cost on consumers.

Through conversations with CalRecycle staff, it was mentioned to me that the language that was changed was reflective on new data.· And that that is what led to showing that the costs were actually lower on consumers.· And if that's the case, I don't know why that section on chemical recycling technologies was changed at all.· That didn't have anything to do with, you know, changing baseline data.· It seems purely an influence from industries that want to utilize this technology.

What also got worse was instead of taking into account whether or not significant hazardous waste was being created is now just if a facility is in substantial compliance with a permit creating hazardous waste, which is overseen by the Department of Toxic Substances Control for the most part which has numerous hazardous waste facilities in the state that have literally been operating for decades without a permit. And this is how we want to oversee these industries that are going to be producing more hazardous waste, most likely in environmental justice communities and communities of color, as what happened with incinerators.

Valley Improvement Projects is a founding member of the California Environmental Justice Coalition, which has been around for over ten years now, and has almost 90 groups in the coalition.· And it was formed by literally dozens of environmental justice organizations that had major issues with the Department of Substances Control, mainly due to their cleanup and management and regulation of hazardous waste facilities. So this is just opening up a whole new door to allow hazardous waste into environmental justice communities while we have this lax regulatory system on them.

For some reason, I'm not sure why, the State is relying on the federal definition of hazardous waste. I thought California came up with their own laws to be more protective than the federal government.

And in fact, we've been making the same exact argument to DTSC lately, who basically tried to switch that out and say, "Well, maybe the federal definition of hazardous waste isn't so bad.· In fact, we want to allow some hazardous waste that wouldn't be allowed under California's law, but that is allowed under federal law to go into local municipal landfills."

That was part of their hazardous waste management plan was to let non-recurrent contaminated soils go to municipal landfills.· Guess where those municipal landfills are for the most part?· Just like incinerators, next to communities of color and environmental justice communities.

You also have this reliance on the ISO standard, which is very far away from addressing environmental justice impacts, hazardous waste impacts, greenhouse gases, and other environmental pollution and contamination.

Again, to sound like a broken record and bring it back to chemical recycling, there is too big of a loophole for an industry that was -- that was said by the author of SB 54, Senator Allen, that pyrolysis facilities, gasification, solvolysis, these other types of incinerators and chemical recycling, were never the intent to be allowed under SB 54 and to be on the same playing field with other types of recycling.· But yet these regulations open up those loopholes to happen.

And we've said from the very beginning that it should just be banned, just like Senator Allen had said. That those types of technologies should not be allowed under this.· We got the first set of regulations, like I said, were stronger.· And we kept advocating for a ban. And after all of those public comments, the regulations just got weaker, and we feel opened that door even wider for these technologies to come in.

It was mentioned earlier before, and I've mentioned it many times before.· You don't have to take my word for it or the environmental justice community. You can look at the law suits of our own attorney general in the state who is suing because of what he refers to as the new wave of a scam of making the public think that we can go ahead and keep producing these single-use plastic products and many other plastic products because they will be recycled now chemically.

And so it lets the industry off the hook for having to reduce of production of plastics, and that's what we want to see in strong regulations.· No chemical recycling, nontoxic reuse and refill, source reductions, a true polluter-pays program where we're not going to allow the producers to get out of paying for certain aspects that are outlined in SB 54.

And starting with environmental justice communities for these programs, for these cleanups, to undo the decades of harm that commodifying waste and allowing polluting technologies and hazardous waste in environmental justice communities.· Thank you.

Response to O-142-4

CalRecycle rejects this comment's suggestion that "chemical recycling" be banned outright in the proposed regulations. A complete ban on any technology could have been accomplished through straightforward language establishing a prohibition based solely on the type of technology. Instead, the Legislature chose to word statute in a way that requires consideration of hazardous waste generation, not mere consideration of the type of technology. The commenter's

concerns over incineration and fuel production are unfounded, also, because Public Resources Code section 42041(aa)(2) expressly forbids such processes from being considered "recycling."

CalRecycle also rejects this comment for the reasons stated in response to comment O-62-1.

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations: 15-Day Comment Matrix

I-1: Tamara Kennick

Comment I-1-1

SB54 law on recycling. I am the neice of Carlton E Fairfax who worked recycling and granddaughter of Sylvia Dawson who recycled regularly from here estate and daughter of Gardena homeowner who recycles regularly.
I want to report the urgent need in Sierra Leone Africa for recycling and waste need. I watched a documentary film on the subject. They have sn emergency there.

Response to I-1-1

Comment rejected. No response to this comment is necessary because it is not related to the revisions made to the proposed regulations.

I-2: Louise Gray

Comment I-2-1

Research has proven microplastics are in our brains and increasing so we absolutely must stop these dangerous poisons!!
Link here is one of many giving scientific proof plastic is deadly.

https://hscnews.unm.edu/news/hsc-newsroom-post-microplastics-human-brains

Response to I-2-1

Comment rejected. No response to this comment is necessary because it is not related to the revisions made to the proposed regulations.

I-3: Cindy Douglas

Comment I-3-1

We are a small organic farm who must package our crops as our customers wish (not as we see fit). Our customers are large grocery store chains that have international supply chains. Many of them wish to deliver more groceries to folks directly (this means individual packaging). Also, many of them require single use plastic as mitigation from "dirt" in the fields (no scientific justifications for many uses of plastic but still we are not able to pass our inspections if we are not using single use plastic products). How can we survive and reduce single use plastics? Provide alternatives and incentives to the retailers of the food products and encourage scientifically sound and statistically meaningful practices to reduce food pathogen/diseases.

Response to I-3-1

Comment rejected. No response to this comment is necessary because it is not related to the revisions made to the proposed regulations.

I-4: Leslie Kruger

Comment I-4-1

I represent a food manufacturing facility serving the State of California.

While I recognize SB 54 and EPR legislation as efforts toward environmental reform, the regulations as currently written will materially impair our ability to operate efficiently while maintaining compliance with USDA and FDA food safety requirements.

There are no commercially viable alternatives to plastic-based flexible packaging for our products. We cannot transition to paper, glass, or other materials without compromising product safety, integrity, and regulatory compliance. Although recyclable or "recycle-ready" resins are under development, there is currently no established recycling stream in the United States for packaging that has been in direct contact with food products. In addition, many of these emerging materials have not been validated for performance in high-abuse supply chains.

Materials such as nylon and polyester are critical to protecting our perishable products. Nylon provides puncture resistance necessary to withstand distribution and handling. Without it, spoilage and failure rates increase significantly (estimated 15–20%). Polyester substrates are essential to maintaining line speeds and operational efficiency. Removing them would reduce production efficiency by approximately 20–25%, increasing run time, emissions, rework, and spoilage.

The most sustainable packaging solution for perishable goods is one that protects and extends shelf life. This approach aligns with USDA and FDA requirements and helps reduce food waste. In the United States, over one-third of food is wasted. Compromising packaging performance will increase spoilage and overall carbon emissions across the supply chain.

Additionally, these materials allow optimization of product fill. In some cases, up to 40% more product per case with less packaging weight. This equals 40 % less packaging waste in our system.

As written, SB 54 may create conflicts with federal food safety regulations. We respectfully request that exemptions be granted where compliance with recyclability mandates would undermine food safety and increase waste."

Response to I-4-1

Comment rejected. The comment does not concern the revisions made to the proposed regulations, so no response is required. To the extent the commenter intended the comment to relate to revisions to section 18980.2(a)(2), the comment is rejected because 18980.2(a)(2) does what the commenter claims the regulations fail to do: It ensures that businesses can "maintain[] compliance with USDA and FDA food safety requirements" by excluding packaging from regulation under the Act when the packaging cannot comply with both the Act and those requirements. Section 18980.2(a)(2) solves, rather than creates, "conflicts with federal food safety regulations" because it excludes packaging from the Act when there are such conflicts. To the extent that the commenter's request for "exemptions . . . where compliance . . . would undermine food safety and increase waste" was directed at 18980.2(a)(2) is a suggestion that such risks should be sufficient under section 18980.2(a)(2) to exclude packaging from the definition of "covered material," without any direct conflict with federal laws and regulations (i.e., "mandatory" provisions), CalRecycle rejects that suggestion for the reasons set forth in response to comment B-3-1 .

I-5: Chad Amaral

Comment I-5-1

To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of D'Arrigo Bros. Co. of California, a 102 year old grower/packer/shipper of fresh produce operating in California. Our company, whose mission is to develop strategies that enable us to provide fresh fruits and vegetables to inspire a healthy lifestyle is at the core of what we do daily. Being a family owned company, our vision is to implement solutions and sustainable practices to enhance the communities we serve. This topic is at the core of what we are driven to achieve. We are relentless in providing a sustainable path in all we do, that is why we are so concerned about the revisions to the SB 54 regulation.
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.
In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to

Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency which reduces energy demands on the supply chain
• Maintain airflow, moisture control and structural stability
• Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

• Reduce spoilage and contamination across the supply chain
• Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

• No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the

accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Thank you for considering these comments.
Sincerely,
Chad Amaral
VP of Sales, Marketing and Business Development
D'Arrigo Bros. Co., of California
Salinas, Ca

For questions, please contact Gail Delihant at gdelihant@wga.com.

Western Growers | 6501 Irvine Center Dr, Suite 100, Irvine, California 92618
www.wga.com | 949.863.1000 | communications@wga.com
Unsubscribe Manage Preferences

Response to I-5-1

Comment rejected. CalRecycle rejects this comment for the for the reasons set forth in response to comment B-3-1 .

I-6: Ben Adam

Comment I-6-1

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a grower and packer of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting,

cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain
Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.
As drafted, the regulation requires producers to prove that:
No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:
Unrealistic recycling and recyclability mandates
Permanent caps on single-use plastic packaging with no accommodation for business growth
Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

Thank you for considering these comments.
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Sincerely,
Ben Adam
Farm Manager
Freshway Farms, LLC
Santa Maria, CA

Response to I-6-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-7: Gerald Donohue

Comment I-7-1

We need to abide by the deadlines previously established. Given timeframes, alternatives to many consumer related plastic products can be found

Response to I-7-1

Comment rejected. No response to this comment is necessary because it is not related to the revisions made to the proposed regulations.

I-8: Marion Garza

Comment I-8-1

Please do not weaken SB 54 to reign in plastic waste. Our planet and health need to end this scourge. Thank you.

Response to I-8-1

Comment rejected. No response to this comment is necessary because it is does not concern the revisions made to the proposed regulations.

I-9: Christina Harvey

Comment I-9-1

I am submitting comments on the January 29, 2026, final draft regulations for the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the significantly narrowed definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Conflict With Federal Food Safety Requirements
Fresh produce packaging is governed first and foremost by federal food safety laws and regulations, including the Food Safety Modernization Act (FSMA) and FDA food-contact requirements. These statutes and regulations represent the nationally accepted, science-based standard for protecting public health. Packaging decisions in our industry are driven by contamination prevention, shelf-life preservation, and compliance with mandatory federal requirements.

As drafted, the regulation no longer reasonably accommodates these federal mandates. Instead, it requires producers to prove that no conceivable alternative packaging design could ever comply, even after coatings, liners, closures, or full redesigns. This standard is not achievable in real-world food safety, operational, or supply-chain conditions.

Essential Role of Fresh Produce Packaging

In addition to food safety, fresh produce packaging performs critical and highly technical functions across harvesting, cooling, transportation, storage, and retail handling. Packaging is carefully engineered to:

•Protect fragile produce from physical damage
•Maintain airflow, moisture control, and structural integrity
•Preserve shelf life and product quality
•Optimize transportation efficiency and reduce energy use

Fresh produce packaging also helps keep produce alive longer by managing respiration and moisture. These functions directly:

•Reduce spoilage and contamination
•Reduce food waste
•Reduce greenhouse gas emissions associated with wasted production, transportation, and disposal

Packaging changes that compromise integrity or shelf life will increase food waste and GHG emissions, directly undermining California's environmental and climate objectives.

Unworkable Exclusion Standard

Under the revised regulation, producers must now prove that:

•No alternative packaging complies with FSMA, FDA food-contact rules, and California law
•Conflicts cannot be resolved through liners, coatings, or closures
•Even a full package redesign would still fail food safety or legal requirements

This standard is impractical and legally risky. Many alternative materials either do not exist at commercial scale or would increase contamination risk, shorten shelf life, compromise package performance, or significantly increase costs for consumers.

Consequences of Eliminating Categorical Exclusions

Without a viable categorical exclusion pathway, SB 54 would impose:

•Unrealistic recyclability and recycling-rate mandates
•Permanent caps on single-use plastic packaging with no accommodation for business growth
•Significant and open-ended EPR fees
•Exposure to civil penalties of up to $50,000 per day, per SKU
•Risk of packaging bans for ongoing noncompliance

These impacts are unprecedented for the fresh produce industry and threaten the viability of safe, affordable food distribution in California.

Request for Revision

I respectfully urge CalRecycle to revise the final regulations to restore a clear, workable categorical exclusion that:

•Recognizes federal food safety packaging requirements as the appropriate compliance benchmark

•Acknowledges the essential role of packaging in food safety, shelf life, waste reduction, and greenhouse gas mitigation
•Provides a realistic, legally defensible pathway for compliance for fresh produce packaging
Thank you for the opportunity to submit comments during this critical 15-day period.

Response to I-9-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-10: che miller

Comment I-10-1

Food packaging is the biggest problem with the over abundance of plastics.
Stop messing around and remove the language that allows broad exemptions for food and over-the-counter medication in SB 54's regulations.

Response to I-10-1

Comment rejected. Regarding "language that allows broad exemptions for food," CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes). Those responses explain the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. Regarding over-the-counter medication, no response is required because provisions relevant to over-the-counter medication packaging have not been revised in the 15-Day Changes.

I-11: John Schoenfeld

Comment I-11-1

I am writing to urge CalRecycle to remove the broad exemptions for food and over the counter medications of SB 54. We are a state that needs to lead the reduction of plastic use and address this critical problem, change the habits of consumers and initiate change.

Response to I-11-1

Comment rejected. Regarding proposed removal of "broad exemptions for food," CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes). Those responses explain the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. Regarding over-the-counter

medication, no response is required because provisions relevant to over-the-counter medication packaging have not been revised in the 15-Day Changes.

I-12: Jennifer Robles

Comment I-12-1

Remove the language that allows broad exemptions for food and over-the-counter medication. I am ready and willing to pay more upfront to make a purchase and less in the future to remediate the damage caused by plastic pollution.

Response to I-12-1

Comment rejected. Regarding proposed removal of "broad exemptions for food," CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes). Those responses explain the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. Regarding over-the-counter medication, no response is required because provisions relevant to over-the-counter medication packaging have not been revised in the 15-Day Changes.

I-13: Kevin Castello

Comment I-13-1

Dear Sirs
Plastic packaging in the produce industry is crucial to the food safety, shelf life and product damage. If you don't have a bag on a one head Lettuce or Cauliflower, you expose the product to damage during transit. If you don't cover the product, you have a safety issue with people handling at the store level. If you don't have a plastic package, your shelf life on the product with last days and not weeks. 100% recycled or compostable is not feasible or realistic, 30% Post Consumer plastic is realistic and is being done now by some major Plastic Packaging Companies. 1/mm bags of 3 Heart Romaine with 30% PCR takes 5,000LBS. of virgin resin out of the landfill. Please re-think this decision. Thank you

Response to I-13-1

Comment rejected. The revisions to 18980.2(a)(2) do not change the protections in the proposed regulations against food safety risk, shelf-life, and product damage. As with the 45-Day Changes, the 15-Day Changes account for those concerns. Under section 18980.2(a)(2), packaging is not considered "covered material" if it would not be possible to comply with the Act and federal laws and regulations addressing such issues. To the extent those concerns arise despite there not being such a conflict, the exclusions described in section 18980.2.4 (for "unique challenges" and health and safety risks) address the commenter's

concern that it is not feasible to satisfy the Act's requirements concerning recyclability and compostability (Public Resources Code section 42050).

I-14: Sheng Su

Comment I-14-1
Comment on 15-Day Modifications to Proposed Permanent Regulations (SB 54)

Submitted by:
Sustain You (Independent systems-oriented technology and resource conversion company)

Opening Statement Sustain You respectfully submits the following comment in response to the 15-day modifications to the proposed permanent regulations under the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).

This comment is limited to the revised language circulated during the 15-day notice period and focuses specifically on long-term implementation stability, system adaptability, and potential structural risks that may arise from the current regulatory framing.

1. Observations on Implicit Assumptions in the Revised Language
Several of the revised provisions appear to rely on an implicit assumption that SB 54 compliance capacity will be achieved primarily through the incremental expansion of currently articulated recycling and processing pathways.

While such an assumption may support administrative clarity in the near term, it also risks embedding a static view of solution space into permanent regulations intended to remain effective over multiple decades.

Response to I-14-1

Comment rejected. Although the commenter asserts that the comment is "limited to the revised language circulated during the 15-day notice period," it does not address the revised language or issues discernibly related to it. Instead, it offers abstract, vaguely stated issues, without explanation of how they are relevant to the revisions. None of the revisions relate to the alleged "assumption that SB 54 compliance capacity will be achieved primarily through the incremental expansion of currently articulated recycling and processing pathways." The commenter does not explain any such link—the comment does not even identify any regulatory text at issue—or show how the 45-Day Changes have been changed in a way that creates, lessens, or exacerbates the concerns stated. Lastly, the commenter does not offer any suggested changes to the revised language, so CalRecyle cannot discern what changes, such as reverting back to the 45-Day Changes, would resolve the commenter's criticism.

Comment I-14-2

2. Risk of Structural Lock-In

By reinforcing category-specific definitions and compliance pathways, the revised language may unintentionally introduce structural lock-in, whereby future solutions are evaluated based on alignment with existing classifications rather than on achieved outcomes.

In other resource recovery and industrial system contexts, non-incremental, system-level approaches have emerged that consolidate reduction, mitigation, and processing outcomes within a single operational framework. These approaches often do not align neatly with legacy categories, despite demonstrating strong performance characteristics and deployment advantages.

Response to I-14-2

Comment rejected. CalRecycle rejects this comment for the same reasons stated in response to comment I-14-1. This comment does not concern the revisions to the 45-Day Changes. Those revisions do not concern "category specific definitions and compliance pathways," and the commenter offers no explanation to the contrary or point to any of regulatory text supposedly at issue.

Comment I-14-3

3. Implications for SB 54 Long-Term Objectives

If permanent regulations implicitly prioritize currently defined pathways over outcome-based evaluation, the State may encounter a situation in which technically viable and cost-effective solutions are excluded not due to performance limitations, but due to classification mismatch.

Over time, this dynamic could constrain California’s ability to meet SB 54 objectives efficiently, particularly under conditions of regional variability, infrastructure limitations, or cost pressure.

Response to I-14-3

Comment rejected. CalRecycle rejects this comment for the same reasons stated in response to comment I-14-1. This comment does not concern the revisions to the 45-Day Changes. The commenter offers the vague, abstract claim that the regulations might "implicitly prioritize currently defined pathways over outcome-based evaluation" and risk excluding "solutions" due to "classification mismatch." CalRecycle cannot discern how these vague statements relate to the revisions embodied in the 15-DayChanges, much less to any other particular regulatory provision.

Comment I-14-4

4. Principle-Level Consideration

From a long-term policy implementation perspective, preserving regulatory flexibility for outcome-oriented, system-level approaches—including those that may not conform to existing categorical structures—will be important to ensuring SB 54 remains resilient and effective as technological capabilities evolve.

This comment does not advocate for any specific technology or pathway, but rather encourages careful consideration of how permanent regulatory structures may shape, or unintentionally limit, future compliance options.

Closing
Thank you for the opportunity to comment on the revised regulatory language.

Respectfully submitted,
Sustain You

Response to I-14-4

Comment rejected. CalRecycle rejects this comment for the same reasons stated in response to comment I-14-1. This comment does not concern the revisions to the 45-Day Changes. Instead, with no reference to the proposed regulations, it offers vague, broad statements about abstract regulatory concepts and "encourages careful consideration of how permanent regulatory structures my shape, or unintentionally limit, future compliance options." CalRecycle cannot discern how this comment relates to any specific regulatory provision.

I-15: Hillary Boylan

Comment I-15-1

Subject (optional): Comments on SB 54 Final Draft Regulations – 15-Day Comment Period
To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a [grower/packer/shipper/distributor] of fresh produce operating in California. The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency which reduces energy demands on the supply chain
• Maintain airflow, moisture control and structural stability
• Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

• Reduce spoilage and contamination across the supply chain
• Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

• No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Hillary Boylan
V.P.

Jim's Steel Supply
Bakersfield, CA

Response to I-15-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-16: Cindy Cheng

Comment I-16-1

February 10th, 2026
Subject: SB 54 Plastic Pollution prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear CalRecycle Regulatory Staff,

I'm a Food Safety and Quality Assurance Manager writing on behalf of Atkins Sheep Ranch, Inc, a small USDA meat processing facility in Fremont, CA. We appreciate CalRecycle's efforts to reduce plastic pollution and improve environmental sustainability as that also aligns with our company values and commitment to leaving nature better. We are also equally committed to producing safe foods with the highest quality possible, a key part of which is food packaging. The regulations as currently written would impair our ability to maintain compliance with various USDA and FDA food safety requirements to ensure that the packaging is safe for direct food contact and does not result in any contamination of the food products. Due to the sensitive, perishable nature of our products, we cannot transition to paper, glass, or similar non-plastic materials without compromising product quality and safety, as well as jeopardize the already short shelf life. At present there is no commercial availability of recycled materials that would be compliant with both SB 54 and FDA/USDA food safety regulations, and the existing recycling infrastructure has not yet allowed for the scale of supply necessary to reliably and consistently support current supply chain needs.

We respectfully request that the regulations be amended to allow exemptions in situations such as ours to ensure that we can continue to maintain compliance with USDA and FDA food safety regulations and requirements.

Thank you,
Cindy Cheng
Food Safety and Quality Assurance Manager
Atkins Sheep Ranch, Inc.
40880 Encyclopedia Circle
Fremont, CA 94538
Office (510) 996-7295

Response to I-16-1

Comment rejected. The commenter's assertion that the proposed regulations interfere with "compliance with various USDA and FDA food safety requirements" is nonsensical. Section 18980.2(a)(2) does the opposite: It ensures that the proposed regulations do not prevent such compliance by excluding packaging from the Act entirely when, as the commenter asserts, it is not possible to "transition" to packaging that complies with the Act. Moreover, the commenter's assertion that there "is no commercial availability of recycled materials that would be compliant" with the Act and federal regulations is nonsensical because the Act does not require use of recycled materials. To the extent the commenter asserts that the scope of the exclusion should be expanded to cover all risks to product quality, safety, and shelf-life regardless of whether there is a conflict with requirements under federal laws and regulations, CalRecycle rejects that assertion for the reasons stated in response to comment B-3-1.

I-17: Clayton Gillum

Comment I-17-1

I represent Certified Meat Products, a food manufacturing facility that serves the State of California.

While we acknowledge that SB 54 and EPR legislation are intended to advance environmental sustainability, the regulations as currently drafted would significantly hinder our ability to operate efficiently while remaining compliant with USDA and FDA food safety requirements.

Our facility has actively tested recyclable and sustainable packaging materials in full-scale production environments. These trials resulted in increased material failure, higher scrap rates, and unplanned line stoppages. The operational inefficiencies created additional downtime, increased energy use, and higher overall emissions, ultimately generating more waste rather than less. These outcomes demonstrate that, under current conditions, such materials are not suitable for mass production of perishable food products.

At present, there are no commercially viable alternatives to plastic-based flexible packaging for our products. Transitioning to paper, glass, or other materials would compromise product safety, quality, and regulatory compliance. Although recyclable or recycle-ready resins are in development, there is currently no established recycling infrastructure in the United States for packaging that has been in direct contact with perishable food. Additionally, many of these emerging materials have not yet been validated for use in high-abuse supply chains.

Materials such as nylon and polyester are essential to the protection of our perishable products. Nylon provides the puncture resistance necessary to withstand handling and distribution; without it, spoilage and failure rates increase substantially—by an estimated 15–20%. Polyester substrates are critical to maintaining production line speeds and operational efficiency. Eliminating them would reduce efficiency by approximately 20–25%, resulting in increased run times, emissions, rework, and product loss.

For perishable foods, the most sustainable packaging solution is one that effectively protects the product and extends shelf life. This approach aligns with USDA and FDA mandates and plays a key role in reducing food waste. In the United States, more than one-third of all food is wasted, and diminished packaging performance would further increase spoilage and associated carbon emissions throughout the supply chain.

As written, SB 54 risks creating conflicts with federal food safety regulations. We respectfully request that exemptions be provided in cases where compliance with recyclability requirements would compromise food safety and lead to increased waste.

Response to I-17-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment I-4-1, which is substantively the same as this comment.

I-18: Vincent Caboara

Comment I-18-1

Subject: Comment on SB 54 Revised Regulations – Agricultural Commodity Packaging

Agricultural Commodity Packaging, Material Exclusions
Section 18980.2 (Categorically Excluded Materials)

To the CalRecycle Rulemaking Team,

The agricultural sector faces a significant challenge in balancing mandatory federal food safety requirements with California's aggressive circularity goals. I have developed a process (Patent Pending, Priority Date 12/17, Potential Standard), which offers a practical solution for producers. By utilizing off-the-shelf modular components for the on-site conversion of agricultural waste, this standard enables the immediate production of compliant, carbon-negative packaging while generating renewable energy—directly supporting the mandates of SB 54 without compromising food safety protocols.

Respectfully,

Vincent Pietro Caboara
ACS (Arboreum Commercial Solutions, LLC) arboreum.net

12/17/25 Filed Potential Standard:
SB 54 Compliance & Alignment Matrix

To: CalRecycle – Office of Public Affairs / SB 54 Rulemaking Team
From: Arboreum Commercial Solutions, LLC (ACS)
Date: February 11, 2026
Subject: Technical Submission regarding 15-Day Changes (Agricultural Commodity Packaging)

I. Executive Summary

The **12/17 Standard** is a proprietary, carbon-negative industrial process (Patent Pending, Priority Date 12/17/2025). The standard utilizes modular, off-the-shelf conversion units to transform agricultural waste into high-strength, biochar-infused pulp on-site, effectively eliminating the need for virgin timber and high-carbon synthetic feedstocks.

II. SB 54 Mandate Alignment Matrix

SB 54 Requirement
100% Recyclable/Compostable (by 2032)

Current Industry Baseline
Failure due to multi-material coatings and virgin fiber saturation.

12/17 Standard Solution
Homogeneous, biochar-infused organic pulp with zero synthetic binders.

Compliance Status
Exceeds

SB 54 Requirement
25% Source Reduction (by 2032)

Current Industry Baseline
Reliant on global logistics and virgin timber extraction.

12/17 Standard Solution
Modular, on-site conversion eliminates supply chain bulk and waste.

Compliance Status
Exceeds

SB 54 Requirement
Carbon Neutrality / SB 308

Current Industry Baseline
Net-Positive (High emissions from pulping and transport).

12/17 Standard Solution
Net-Negative (Direct sequestration of carbon into the packaging matrix).

Compliance Status
Verified

SB 54 Requirement
PRO Participation

Current Industry Baseline
High administrative fees due to non-compliant material use.

12/17 Standard Solution
Minimum fee tier due to inherently circular, non-toxic material profile.

Compliance Status
Optimized

III. Technical Performance Metrics
● Feedstock: 100% Agricultural Waste (Hemp, Rice Straw, Corn Stover, etc.).
● Energy Profile: Energy-independent via closed-loop thermal conversion. Excess thermal energy supports on-site pulping operations.
● Carbon Sequestration: Direct integration of biochar provides a permanent carbon sink within the finished packaging product.
● Scalability: Modular "Off-the-Shelf" (OTS) deployment allows for rapid regional integration in rural agricultural hubs (Pillar 4 Alignment).

IV. Formal Notice of Alternative Availability
This submission serves as formal evidence on the public record that a viable, scalable alternative to legacy high-carbon packaging exists. For the purposes of SB 54 rulemaking, the **12/17 Standard** demonstrates that categorical exclusions for agricultural commodities are no longer necessary for technical or economic reasons.

Response to I-18-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

I-19: Francis Pacheco

Comment I-19-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Francis Pacheco
5330 Pirrone Road
Salida, CA 95368-9090

Response to I-19-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-20: michael Doherty

Comment I-20-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

michael Doherty
1167 cortina school road
Arbuckle, CA 95912-0777

Response to I-20-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-21: Renee Avilla

Comment I-21-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Renee Avilla
1653 Quails Nest st
Roseville, CA 95747-4633

Response to I-21-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-22: Bill Mattos

Comment I-22-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Bill Mattos
4640 Spyres Way, suite 4, Modesto
Modesto, CA 95356-9800

Response to I-22-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-23: PETER HUNN

Comment I-23-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

PETER HUNN
52548 Clarksburg Road
Clarksburg, CA 95612-5092

Response to I-23-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-24: Rich Hudgins

Comment I-24-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Rich Hudgins
2600 River Plaza Drive
Sacramento, CA 95833-3376

Response to I-24-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-25: Scott Klittich

Comment I-25-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Scott Klittich
233 4th street
Fillmore, CA 93015-1419

Response to I-25-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-26: Jon Marthedal

Comment I-26-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Jon Marthedal
1280 E Lincoln Ave
Fresno, CA 93725-9425

Response to I-26-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-27: Mona Shulman

Comment I-27-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Mona Shulman
631 N. Cluff Avenue
Lodi, CA 95240-0756

Response to I-27-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-28: Alicia Rockwell

Comment I-28-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Alicia Rockwell
2612 Oakhurst Drive
Oakdale, CA 95361-2217

Response to I-28-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections and concerns this comment raises.

I-29: Stephen Mancebo

Comment I-29-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Stephen Mancebo
14891 Ave. 232
Tulare, CA 93274-9328

Response to I-29-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-30: Barbara LeVake

Comment I-30-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Barbara LeVake
705 OBanion Road, Yuba City
Yuba City, CA 95991-9521

Response to I-30-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-31: Jon Reelhorn

Comment I-31-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Jon Reelhorn
7730 E. Belmont Ave, Fresno, CA
Fresno, CA 93737-9718

Response to I-31-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-32: Liz Perez

Comment I-32-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Liz Perez
14804 Magnolia Blvd
Sherman Oaks, CA 91403-1310

Response to I-32-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-33: Jordan Fengel

Comment I-33-1

TO: California Department of Resources Recycling and Recovery (CalRecycle) via online form at https://calrecycle.commentinput.com/?id=3ikJbFpZN

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations Comments

DATE: February 13, 2026

Dear CalRecycle SB 54 Regulatory Team,

The Carton Council of North America is composed of four leading carton manufacturers – Elopak, Novolex Pactiv, SIG, and Tetra Pak. Formed in 2009, the Carton Council works to deliver long-term collaborative solutions to divert valuable cartons from the landfill.

We appreciate the opportunity to provide comments on CalRecycle's draft regulations for SB 54 and offer the following comments for consideration.

Section 18980.2.5 Covered Material Category List Updates

18980.2.5(b) For purposes of subdivision (a), updates are necessary if new information or changed circumstances renders the list out of date, incomplete, or otherwise inaccurate with respect to how it relates to waste generation and the handling and end-of-life management of covered material.

Comment:

In the discussion document for the SB 54 Informal Public Workshop on the SB 54 "Permanent Regulations" (May 27, 2025) CalRecycle noted that it "deleted language in subdivision (b) of section 18980.2.5 that required updates to the Covered Material Categories List in response to new information or changed circumstances." It seems that CalRecycle only intends to update the CMC list if information has changed, but no more frequently than once per year.

Subdivision (e) of section 42061 of the Public Resources Code states "As part of the process, the Department shall update the list at least [emphasis added] annually until January 1, 2032." We believe that CalRecycle has an obligation to consider additional data as they become available and publish changes to the list throughout the calendar year to be true to the spirit of the law and to avoid potential negative impacts in these early phases of implementation. Local government service provider contracts (for recycling collection list purposes) need to be informed by any CMC "recyclable" changes well before contracts are renewed. An annual update is simply not adequate,

as it is not reflective of dynamic circumstances of recyclable determinations. If the list is not current and accurate it will lead to consumer confusion as materials are dropped from collection programs, only to potentially be added back in. This will create consumer distrust of the program and will be burdensome to municipalities. It will also be a burden to businesses and stifle innovation as producers that are committed to using recyclable packaging make unnecessary and costly packaging changes.

We recommend explicitly adding language requiring the CMC list to be updated more frequently than annually if information has changed that would change the recyclable or compostable status of a CMC, but we also understand CalRecycle's desire to limit administrative burdens. Therefore, we propose the following language:

18980.2.5(b) For purposes of subdivision (a), updates are necessary if new information or changed circumstances renders the list out of date, incomplete, or otherwise inaccurate with respect to how it relates to waste generation and the handling and end-of-life management of covered material. At a minimum, the Department shall update the list twice annually if new information and changed circumstances support changing the recyclable or compostable status of a CMC.

Section 18980.2.6 Covered Material Category List Recommendations

18980.2.6(a) A PRO, participant producer, or Independent Producer may recommend changes to the CMC list, subject to the same time constraints applicable to information submissions under subdivision (f) of section 18980.2.5.

Comment:

The Carton Council speaks on behalf of four leading carton manufacturers and the obligated producers that carton manufacturers furnish with carton packaging material. This section precludes carton packaging producers, and their trade association, the Carton Council, from recommending changes to the CMC list. We ask that CalRecycle make the list of who can recommend changes to the CMC list more inclusive, to include packaging manufacturers and their trade associations, at a minimum.

We do not understand CalRecycle's methodology regarding how it characterizes material types and forms (MT&F) for cartons – specifically that CalRecycle has divided cartons into two separate CMC and MT&F categories – despite at least 10 requests to CalRecycle by the Carton Council to combine them. The Carton Council asks that CalRecycle explain why it divides aseptic cartons (Category ID PF15P) and gable-top cartons (Category ID PF5P) into two categories when they should be combined into a single CMC. Gable-top and aseptic cartons are widely recognized and managed within the recycling industry under a single material category (including in the EPR systems in Maine, Oregon, and Colorado). Circular Action Alliance supports combining the two carton CMCs into one in all of its state programs, including in California. Aseptic and gable-top cartons are **baled, marketed, and sold together** at Material Recovery Facilities (MRFs) across the country, including within California. The industry does not

differentiate between gable-top and aseptic cartons when preparing bales for end markets. In fact, ReMA's ISRI specifications for the Grade 52 bale includes both gable-top and aseptic 1.2. The U.S. EPA, in its waste characterization studies, also keeps aseptic and gable-top cartons together. Consumers often have difficulty discerning the two types of cartons. CalRecycle's SB 343 MCS Report issued in April 2025 found that the difference in acceptance in recycling programs between the two types of cartons is negligible and programs that stated in the past that they manage them differently in all likelihood no longer do (i.e., any implication that they are collected, sorted, or marketed separately from each other is based on outdated information). Furthermore, the MCS Report found that large volume transfer and processing facilities (LVTPFs) sort both types of cartons at the same percentage for recycling and into the same output stream. Maintaining this artificial and unnecessary distinction between the two types of cartons increases the cost to California consumers, the PRO, and CalRecycle by requiring additional composition study sorting, additional data collection, calculation of two instead of one recycling rates, and separate cost allocation to each carton type. We once again request that CalRecycle combine aseptic and gable-top CMCs together into one category.

---

1 https://www.isrispecs.org/orpheus_resource/aseptic-packaging-and-gable-top-cartons/
2 https://www.epa.gov/sites/default/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf

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

18980.3.1(b) To be considered recyclable under this section, a covered material category must first be preliminarily identified by the Department when the Department publishes a material characterization study update or additional information pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) of subdivision (d) of section 42355.51 of the Public Resources Code. The Department may preliminarily identify a covered material category only if it preliminarily concludes that the following conditions are met:...

(c) If the Department preliminarily identifies a covered material category pursuant to subdivision (b), it shall publish the basis for its determination on its website and ~~. The Department shall provide an opportunity for public engagement and~~ allow 30 days for public review and submission of comments and ~~comment and submission of~~ relevant information and evidence.

Comment:

The Carton Council appreciates the improvement in the clarity of this rule section by the addition in this draft of a specified 30-day period for public comments. However, this section still lacks clarity. The Carton Council requests the following edits to this paragraph:

To be considered recyclable under this section, a covered material category must first be preliminarily identified by the Department within 60 days of when the Department publishes a material characterization study update or additional information pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) of subdivision (d) of section 42355.51 of the Public Resources Code. The Department ~~may~~ must preliminarily identify a covered material category only if it preliminarily concludes that the following conditions are met:

These changes are needed to ensure the Department responds promptly to new information, as significant programmatic confusion and relapse can occur if there are delays in identifying CMCs that are trending toward meeting the requirements of section 42355.51 of the Public Resources Code – particularly those that have historically been included in many municipal recycling programs throughout California. The "trending toward" designation should mitigate disruption to recycling programs and therefore is a time-sensitive component of the program. The Carton Council urges the Department to develop the trending toward criteria as soon as possible to avoid disruption of recycling programs in the state.

Section 18980.4 Responsible End Market Criteria

18980.4(a)(3) The entity shall minimize the discharge of emissions, effluents, and materials produced by the entity, including feedstocks and residuals, and shall handle incompatible materials in the following manner:
(A) For incompatible materials that can be further processed and recycled, the entity sends materials to entities that are authorized to further process and recycle the material.
(B) For incompatible materials that cannot be further processed and recycled, the entity disposes of the material in a way that minimizes significant effects on the environment and risks to public health and safety.

Comments:

The phrase "can be further processed and recycled" is very broad and the word "can" is subject to interpretation. The Carton Council is concerned that end markets may choose not to source materials from California due to regulatory ambiguity and uncertainty over whether they will be determined to not be a responsible end market if they do not recycle incompatible material that they currently receive and dispose of because they cannot recover and sell it for recycling cost-effectively. CalRecycle's explanatory language states that the subsection is necessary to effectuate the intent of section 42041 of the PRC to prevent responsible end markets from being able to dispose of materials that are capable of being further processed and recycled [to maximize environmental benefits]. This begs the question as to whether CalRecycle expects such activities to take place for minimal amounts of incompatible material, and at all costs. This regulatory uncertainty and financial risk could prevent end markets from sourcing material from California. Furthermore, forcing end markets to recycle incompatible material that is not able to be recycled cost-effectively in order to qualify as a

responsible end market will increase the program costs due to these regulations, as markets will have to reduce bale purchase prices to comply with these regulations, resulting in higher net costs to California recycling facilities, and ultimately higher costs to California consumers. The Carton Council requests the following edits to this paragraph:

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

Alternatively, CalRecycle can address regulatory risk and uncertainty by adding a specific dollar-per-ton cost limit for what is practicable for responsible end markets with respect to incompatible materials, such as what Oregon has done in its responsible end market regulations.

Section 18980.6.7 Eco-modulated Fee and Fee Schedule

18980.6.7(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic covered material derived from renewable materials.
(1) "Renewable materials," for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are ***wholly*** *[emphasis added] derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat.*

Comments:

We request that the word "wholly" be deleted from the draft rules. A declared intent of SB 54 is to reduce plastic use in packaging in the absolute, and any packaging that reduces the use of fossil-based plastic, including shifts to formats made from renewable materials, should be incentivized, even if some non-renewable material remains. Such innovation should be encouraged rather than discouraged.

Thank you for the opportunity to provide these comments on behalf of the Carton Council and its members.

Sincerely,
Jordan Fengel,
Executive Director, Carton Council

Response to I-33-1

Comments rejected. No response is necessary because this comment does not concern the actual revisions made to the 45-Day Changes.

I-34: Gerald Donohue Gerald Donohue

Comment I-34-1

SB 54 was a landmark piece of legislation. Changes for packaging meat or some health-related issues deserve a look but to grant numerous exemptions to grocery and other retail entities is an unworthy backtrack. SB 54 was a breath of fresh air. Have courage support the original premises of the bill. We are talking about generations to come in supporting this legislation. We can adapt to change. Thank you for listening!

> **Response to I-34-1**
>
> Comment rejected. No substantive response is necessary because the comment does not recommend a change to any proposed regulations or raise an objection related to the rulemaking process, nor does the comment concern specific revisions embodied in the current 15-day changes. To the extent this comment can be interpreted as a general objection to inclusion of section 18980.2(a)(2), CalRecycle also rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it.

I-35: Larry Bradley

Comment I-35-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Larry Bradley
9992 Jones Ave
Durham, CA 95938-9718

Response to I-35-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-36: Anonymous

Comment I-36-1

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a [grower/packer/shipper/distributor] of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting,

cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain
Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

Unrealistic recycling and recyclability mandates
Permanent caps on single-use plastic packaging with no accommodation for business growth
Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Joseph Henry
Packaging Sales
J. Gibbons & Associates, Inc.
Salinas CA

Response to I-36-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

I-37: Anonymous

Comment I-37-1

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a [grower/packer/shipper/distributor] of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain
Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

Unrealistic recycling and recyclability mandates
Permanent caps on single-use plastic packaging with no accommodation for business growth
Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Mike Henry
Packaging Sales
J. Gibbons & Associates, Inc
Salinas, CA

Response to I-37-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

I-38: Arturo Vargas

Comment I-38-1

I am currently packing most of our broccoli in 100% recyclable plastic 1 time use boxes. how does this bill impactus farmers?

[The second page is a photo of a box of broccoli.]

Response to I-38-1

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

I-39: Scott Hakl

Comment I-39-1

To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act” regulation on behalf of my company, APTCO, LLC a manufacturer EPS grape boxes for export from California.
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word “mandatory” and the narrow definition of what is “reasonably possible” effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.
In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency which reduces energy demands on the supply chain

• Maintain airflow, moisture control and structural stability
• Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
• Reduce spoilage and contamination across the supply chain
• Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.
As drafted, the regulation requires producers to prove that:
• No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:
• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
APTCO, LLC has been recycling EPS for more than 20 years and objects to CalRecycle labeling EPS as not recyclable. It is recyclable and is being recycled at scale (≈30%).
Thank you for considering these comments.
Sincerely,
Scott Hakl
APTCO, LLC
McFarland, CA 93215

Response to I-39-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment. The comment is also rejected regarding the commenter's objection to the

"CalRecycle labeling EPS as not recyclable." No substantive response to that objection is necessary because it does not concern the proposed regulations, which do not address that issue directly. Even if that objection could be construed to concern the proposed regulations, no response would be necessary because it does not concern the revisions made to the 45-Day Changes.

I-40: Sydney Vandemeulebroecke

Comment I-40-1

2/13/2026

RE: California SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act

Permanent Regulations; 15-day Public Comment Period

The Plant Based Products Council (PBPC) appreciates this opportunity to provide comments in response to the California Department of Resources Recycling and Recovery's (CalRecycle) 15-day public comment period regarding the latest changes to the proposed rulemaking for Senate Bill 54 (SB 54) Plastic Pollution Prevention and Packaging Producer Responsibility Act regulations.

PBPC represents businesses large and small that are committed to advancing a more circular bioeconomy through greater adoption of plant-based materials supported by appropriate end-of-life infrastructure. We aspire to deliver a future based on renewable goods that improve global resource efficiency and address challenges while providing environmental benefits.

Plant-based products, including biobased plastics, are made from renewable sources like corn, hemp, soy, and sugarcane, and can serve as alternatives to traditional fossil-fuel-derived materials. Many of these products are compostable or recyclable, enabling them to contribute to soil health through composting, support carbon sequestration, reduce methane emissions from landfills, or be integrated into existing recycling systems. As interest grows among consumers, brands, and retailers for environmentally beneficial packaging, plant-based products, either compostable or recyclable, are increasingly positioned to play an important role in reducing waste and promoting resource recovery.

We appreciate that CalRecycle continues to take industry feedback and has incorporated previous recommendations that support the environmental goals of SB 54. As the rulemaking moves towards finalization, PBPC continues to have concerns with the proposal. Thank you for your responsiveness to these priorities as we work together to foster an improved packaging ecosystem in California.

Response to I-40-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment I-40-2

Treatment of "excluded material"

We appreciate and support the requirement that an entity must "demonstrate that it is not reasonably possible to use any alternative packaging or packaging components" to qualify for a categorical exclusion. This requirement ensures producers consider compostable or recyclable alternatives before seeking exclusions, helping to advance the use of more sustainable packaging solutions.

"The notice shall identify the specific provisions of this Act and the mandatory federal regulations, rules, or guidelines that are in conflict, specifically describe all packaging and packaging components to be excluded and the associated products, and demonstrate that it is not reasonably possible to use any alternative packaging or packaging component that would avoid the conflict."

Response to I-40-2

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment I-40-3

The exemption of certain fiber-based products from third-party certification

We reaffirm that all products should meet the same burden of proof testing for recyclability or composability, regardless of material composition. This ensures fairness and consistency across the industry. Further, we are concerned that CalRecycle's broad testing requirement, without a specified independent standard for assessing the absence of plastics or polymers in fiber products, may lead to inconsistent methods of testing and disclosure. Without clear guidelines and independent verification, companies may use varying approaches, which could impact the integrity of the process.

Concerns with definitions

Renewable materials

We remain deeply concerned that CalRecycle has overlooked the fact that many plastic products derived from renewable materials, such as "wood, mycelium, algae, or plants like cotton, corn, sugar cane, or wheat," may contain trace amounts of materials from other sources. The requirement for products to be "wholly derived from natural resources" still unfairly disadvantages producers who are striving to create sustainable products made using renewable materials.

This approach not only penalizes companies working to reduce their environmental footprint but could also hinder efforts to develop and scale up sustainable solutions. By imposing stringent requirements, CalRecycle risks stifling innovation and limiting the production of materials that reduce reliance on fossil fuels and minimize waste. Using a fee structure to encourage the use of a portion of renewable materials rather than requiring purity will help drive the transition to a circular economy. The adoption of incentives and other policy tools could also drive growth and adoption of plant-based options.

“(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic covered material derived from renewable materials. (1) “Renewable materials,” for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are wholly derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat.”

Food service ware

We are still concerned that the definition of 'food service ware' excludes it from being classified as packaging. This creates unnecessary complexity and draws arbitrary distinctions that complicate producer responsibility assignments. *“(8) “Food service ware” means the goods identified in subparagraphs (A) and (B). Plastic single-use food service ware is covered material and shall not be considered “packaging” for purposes of this chapter.”*

At the same time, we support the inclusion of language within the definition of ‘food service ware’ covering items “designed specifically for use in conjunction with food service ware items,” as this appropriately captures food-associated products such as cup sleeves alongside cups and facilitates their co-disposal.

Plastics and polymers

It is imperative that CalRecycle distinguish between “plastics” and “polymers” for the purposes of this regulation. Section 18980.3.3(c)(4)(A)(i) states that any product exempted from the compostable labeling requirements must:

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

However, polymers are not necessarily synonymous with plastics. Polymers are present in many common products, from soaps to lubricants, that cannot be made into plastics. To ensure accurate application of the regulation and the proper identification of persistent, non-compostable polymers used in covered material items, we respectfully request that CalRecycleadopt a separate and precise definition of “polymers.” Using the recognized definition of “polymer” from ASTM D883 would align with both the intent and language of existing statute, including the references to ASTM D6400 and D6868 in defining “compostable.”

Realistic criteria for responsible composting end markets

We remain concerned about the requirements for full biological decomposition for compostable materials. CalRecycle requires entities seeking approval to ensure that compostable covered material will fully biologically decompose. While we agree that composting entities should meet a standard, it is essential that this standard be clear and enforceable. We recommend replacement language to clarify that entities should demonstrate the ability to fully process compostable covered products, provide evidence of disintegration within their process, and confirm that the final compost is stable and mature. This section should also reflect AB 1201’s requirements for material neutrality; products of all material types must adhere to the same disintegration and biodegradation standards (ASTM D6400 and D6868) under equivalent facility

conditions. These revisions are crucial to supporting responsible and sustainable end markets for compostable products in California. We appreciate your continued attention to this matter.

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

Concerns regarding De Minimis Composting Exceptions

We are concerned about the allowance of contamination in compostable streams through the inclusion of *de minimis* non-compostable components. Even small amounts of non-compostable materials within covered products can persist as contaminants in composting systems. We strongly urge the removal of “composting” and “compostable” from the *de minimis* allowance to protect the integrity of compost.

***

It is important for the SB 54 regulations to recognize the growing nature of the plant-based products industry and foster, rather than discourage their use. By minimizing barriers and establishing clear, achievable criteria for both compostable and recyclable products, the market for plant-based solutions can expand.

Thank you for your continued consideration of these comments. Please contact me at james@pbpc.com with any questions.

Sincerely,
James Glueck Jr.
Executive Director

Response to I-40-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

I-41: Mark Leonard

Comment I-41-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Mark Leonard
901 N. Walton Ave
Yuba City, CA 95993-8634

Response to I-41-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-42: Elaine Trevino

Comment I-42-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final

regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Elaine Trevino
27770 N. Entertainment Drive
Valencia, CA 91355-1092

Response to I-42-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-43: Danny Gresser

Comment I-43-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded

Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Danny Gresser
3250 skyway drive santa maria , ca
Santa Maria, CA 93455-2511

Response to I-43-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-44: Catherine Marsh

Comment I-44-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain

food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Catherine Marsh
899 Reddington AVE
Arbuckle, CA 95912-9711

Response to I-44-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-45: Brian Erickson

Comment I-45-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Brian Erickson
6728 County Road 24 Orland, CA
Orland, CA 95963-9776

Response to I-45-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-46: John Glick

Comment I-46-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion

acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

John Glick, Owner Delta Blue Blueberries
310 Sun West Place
Manteca, CA 95337-4314

Response to I-46-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-47: Beverly Kennedy

Comment I-47-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Beverly Kennedy
2066 Providence Way
Lodi, CA 95242-4756

Response to I-47-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-48: Ali Arshad

Comment I-48-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Ali Arshad
1612 N Dakota Ave
Modesto, CA 95358-8507

Response to I-48-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-49: Andrew Kamper

Comment I-49-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Andrew Kamper
201 Crawford Rd
Modesto, CA 95356-9518

Response to I-49-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-50: Bob Amarel

Comment I-50-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Bob Amarel
6368 S Township Rd
Yuba City, CA 95993-9747

Response to I-50-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-51: Garrett Gilcrease

Comment I-51-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Garrett Gilcrease
16505 Idaho Avenue
Lemoore, CA 93245-9532

Response to I-51-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-52: Guy Cotton

Comment I-52-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Guy Cotton

2097 Beyer Ln

Stockton, CA 95215-2009

Response to I-52-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-53: Carl Hoff

Comment I-53-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,
Carl Hoff
1193 Richvale Highway
Richvale, CA 95974-8008

Response to I-53-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

I-54: Carlos Gutierrez

Comment I-54-1

February 13, 2026
Zoe Heller
Executive Director
California Department of Resources Recycling and Recovery (CalRecycle)
PO Box 4025
Sacramento, CA 95712-4025
Re: SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations 15-Day Comment Period

Dear Director Heller,

On behalf of the Consumer Healthcare Products Association (CHPA)1, thank you for the opportunity to provide comments on CalRecycle's proposed regulations implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). We appreciate the significant effort that has gone into developing this updated draft and, in particular, we strongly support the Department's recognition of the importance of exempting certain over-the-counter (OTC) drug products. That said, we respectfully urge the Department to expand this exemption to apply broadly to all OTC drugs, without exception, to ensure consistency and alignment with SB 54.

Strong Support for Medical Products Exclusions

CHPA strongly supports the inclusion of paragraph (6) within Section 18980.2(a), which excludes packaging for medical products, including nonprescription drugs. This exclusion, consistent with SB 54's enacted language, is critical because drug packaging must comply with stringent federal requirements for product integrity, tamper evidence, child resistance, and sterility that may be incompatible with source reduction or recycled content mandates.

Without this exemption, manufacturers may be forced to limit product lines or eliminate smaller, more affordable package sizes—disproportionately harming nearly 29% of Californians in lower-income households who rely on these formats to manage costs. Maintaining this exemption ensures continued consumer access to affordable medications and oral care products without compromising federal compliance or product safety.

Legal Foundation for a Comprehensive Drug Exemption

While we appreciate the current exemption for OTC drug products, we urge CalRecycle to extend it to cover all nonprescription drugs without product limitations or restrictive criteria.

All OTC drugs are subject to the same federal regulatory framework, labeling requirements, and packaging integrity standards, leaving no meaningful policy or public health basis for differentiating among them for EPR packaging obligations. SB 54 explicitly exempts "medical products" by referencing Title 21 of the United States Code, Sections 321(g) and 321(h), under which all nonprescription drugs unequivocally qualify as medical products per the Federal Food, Drug, and Cosmetic Act—with no distinction drawn between different types. The draft regulations' attempt to carve out only certain nonprescription drugs based on secondary classifications, such as SPF content, is inconsistent with the statute's plain language and regulatory structure.

FDA Principles of Drug Classification

The Food and Drug Administration (FDA) maintains a fundamental regulatory principle: a drug is a drug, regardless of its additional properties or classifications. Products meeting the statutory definition of a drug under 21 U.S.C. Section 321(g) retain their essential character as pharmaceutical products, even when they also qualify as cosmetics or possess other characteristics. All FDA-regulated OTC drugs—identified by their required "Drug Facts" panel—are medical products under federal law, and secondary benefits such as cosmetic, cleaning, or sunscreen properties do not alter that status.

SB 54's exclusion of nonprescription drugs rightly recognizes the unique packaging requirements necessary to maintain product integrity, safety, and efficacy across all

pharmaceutical products. OTC products—whether medications, mouthwashes, or toothpastes—must meet stringent FDA criteria for maintaining active ingredient levels and concentrations throughout their shelf life. The structural integrity required to prevent moisture and vapor transmission, essential for preserving active pharmaceutical ingredients, cannot be achieved through conventional plastic reduction methods without compromising regulatory compliance. Additionally, Consumer Product Safety Commission requirements for child-resistant closures under the Poison Prevention Packaging Act impose further constraints that make meeting reduction targets untenable for FDA-regulated OTC products. These critical public health functions should not be compromised by regulatory distinctions based on secondary product characteristics.

Concerns with the Current Scope of Implementation

CalRecycle's Initial Statement of Reasons (August 2025) suggests that nonprescription drugs also regulated as cosmetics—such as dandruff shampoo, antibacterial hand soap, and antiperspirant—would not qualify for the exemption. This interpretation raises serious concerns, as it creates inconsistent treatment among OTC drugs based on secondary characteristics, contradicting the uniform treatment these pharmaceutical products receive under federal law. It also narrows the exemption beyond what SB 54's statutory language supports and introduces regulatory uncertainty that could extend to numerous other nonprescription drug categories. A comprehensive exemption for all nonprescription drug products, regardless of their additional uses, would eliminate these ambiguities and ensure predictable compliance requirements and enforcement.

National Consistency in Packaging EPR Legislation

California’s exemption for all nonprescription drugs would align with the prevailing approach nationwide that have adopted similar laws. States with enacted EPR legislation that exempt all drugs from scope include:

- Colorado
- Oregon
- Minnesota
- Washington
- Maryland

This consistent approach across multiple states reflects widespread recognition that drug packaging serves critical health and safety functions that warrant exclusion from EPR and post-consumer recycled content requirements. California's proposed regulations align with this emerging national consensus and demonstrate sound policy coordination across state lines.

Recommended Regulatory Change

CHPA respectfully requests that CalRecycle revise the Article 2 exemption to explicitly include all nonprescription drugs, regardless of additional classifications such as cosmetics, soaps, or sunscreen products. This revision would align California's requirements with federal law and product classifications, honor SB 54's statutory language, maintain consistency with national packaging EPR requirements, and preserve the integrity of pharmaceutical packaging standards.

Conclusion

CHPA appreciates CalRecycle's recognition of the importance of excluding nonprescription drugs from SB 54's requirements. However, limiting that exclusion to

select drug categories undermines statutory clarity and consistency with federal packaging requirements. The medical products exemption should apply comprehensively to all nonprescription drugs without exception, ensuring continued access to essential healthcare products for Californians and supporting the successful implementation of SB 54. We appreciate your consideration of these comments and welcome the opportunity to provide any additional information to assist the Department through the final stage of the rulemaking process.
Respectfully,
Carlos I. Gutiérrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association
cgutierrez@chpa.org | 202-429-3521

1Consumer Healthcare Products Association is the national trade association based in Washington, D.C. that represents the manufacturers of over-the-counter (OTC) medications, dietary supplements, and OTC medical devices.

Response to I-54-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made in the 15-day Changes.

I-55: Stan Chance

Comment I-55-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Stan Chance
3695 E. Zeering Road
Denair, CA 95316-9379

Response to I-55-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-56: Matthew Efird

Comment I-56-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion

acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Matthew Efird
14596 South Del Rey Ave.
Kingsburg, CA 93631-9506

Response to I-56-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-57: Jeff Colombini

Comment I-57-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Jeff Colombini
11292 N. Alpine Road
Stockton, CA 95212-9325

Response to I-57-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-58: John Monroe

Comment I-58-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

John Monroe
23850 Vía Esplendor Unit 61
Cupertino, CA 95014

Response to I-58-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-59: Mark Martins

Comment I-59-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Mark Martins
915 Louisa Terrace
Santa Maria, CA 93455-7442

Response to I-59-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-60: Paul Vermeulen

Comment I-60-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Paul Vermeulen
1348 clark rd modesto ca
Modesto, CA 95358-9517

Response to I-60-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-61: David Bushey

Comment I-61-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

David Bushey
216 Palomar Ave
Pismo Beach, CA 93449-1943

Response to I-61-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-62: Todd Pearson

Comment I-62-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Todd Pearson
83 Encanto Lane
San Luis Obispo, CA 93401-7710

Response to I-62-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-63: Ashley Dowden

Comment I-63-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Ashley Dowden
103 Lauren Ct
Winters, CA 95694-2111

Response to I-63-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-64: Adam Portman

Comment I-64-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Adam Portman
3250 Skyway Dr. Suite 201
Santa Maria, CA 93455-2512

Response to I-64-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-65: Brooke Sparks

Comment I-65-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Brooke Sparks
1021 Southwood Dr Apt D
San Luis Obispo, CA 93401-5865

Response to I-65-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-66: Alma Reyes

Comment I-66-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Alma Reyes
3250 Skyway Dr. Santa Maria, CA
Santa Maria, CA 93455-2511

Response to I-66-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-67: Allen Davis

Comment I-67-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Allen Davis
3250 Skyway Dr
Santa Maria, CA 93455-2511

Response to I-67-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-68: Dale Van Groningen

Comment I-68-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Dale Van Groningen
21025 S Jack Tone Rd
Ripon, CA 95366-9603

Response to I-68-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-69: Michael Samra

Comment I-69-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Michael Samra
9269 Dever Circle
Elk Grove, CA 95624-3609

Response to I-69-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-70: Robert McIlhatton

Comment I-70-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Robert McIlhatton
2998 w Brompton Lane
Fresno, CA 93711-1185

Response to I-70-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-71: Richard Samra

Comment I-71-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Richard Samra
3212 Shelter Cove Lane
Elk Grove, CA 95758-4666

Response to I-71-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-72: Stephen Van Duyn

Comment I-72-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Stephen Van Duyn
22466 N Ripon Rd Ripon Ca
Ripon, CA 95366-9005

Response to I-72-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-73: Molly Doherty

Comment I-73-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Molly Doherty
6579 Asa Lane
Arbuckle, CA 95912-9572

Response to I-73-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-74: Donald Bowden

Comment I-74-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workablecategorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Donald Bowden
7761 Undine Rd Stockton, Ca
Stockton, CA 95206-9642

Response to I-74-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-75: Aaron Dillon

Comment I-75-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Aaron Dillon
887 Casserly Road
Watsonville, CA 95076-9724

Response to I-75-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-76: Edward Tilma

Comment I-76-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Edward Tilma
4500 Albers Road
Oakdale, CA 95361-8049

Response to I-76-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

I-77: Phat Phan

Comment I-77-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Phat Phan
2917 E Shepherd Ave
Clovis, CA 93619-9152

Response to I-77-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

B-1: Ted Carman (Ted Carman)

Comment B-1-1

I represend a a number of perishable food manufcturers serving the State of California.

While I recognize SB 54 and EPR legislation as efforts toward environmental reform, theregulations as currently written will materially impair our ability to operate efficiently whilemaintaining compliance with USDA and FDA food safety requirements.

There are no commercially viable alternatives to plastic-based flexible packaging for our products.We cannot transition to paper, glass, or other materials without compromising product safety,integrity, and regulatory compliance. Although recyclable or "recycle-ready" resins are underdevelopment, there is currently no established recycling stream in the United States for packagingthat has been in direct contact with perishable food products. In addition, many of these emergingmaterials have not been validated for performance in high-abuse protein supply chains.

Barrier materials such as nylon and polyester are critical to protecting our products. Nylon provides puncture resistance necessary to withstand distribution and handling. Without it, spoilage and failure rates increase significantly (estimated 15–20%). Polyester substrates are essential to maintaining line speeds and operational efficiency. Removing them would reduce production efficiency by approximately 20–25%, increasing run time, emissions, rework, and spoilage.

The most sustainable packaging solution for perishable goods is one that protects and extends shelf life. This approach aligns with USDA and FDA requirements and helps reduce food waste. In the United States, over one-third of food is wasted. Compromising packaging performance will increase spoilage and overall carbon emissions across the supply chain.

> **Response to B-1-1**
>
> Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes. To the extent this comment was intended to be directed to section 18980.2(a)(2) of the regulations, a response is nonetheless unnecessary because the comment does not identify how the stated concerns relate to the revisions made to that section, nor does the comment propose changes for CalRecycle to consider.

Comment B-1-2

As written, SB 54 may create conflicts with federal food safety regulations. We respectfully request that exemptions be granted where compliance with recyclability mandates would undermine food safety and increase waste."

Response to B-1-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-9-1, which raises the same issues and makes the same request as does this comment.

B-2: Bioelements (Camila Errazuriz)

Comment B-2-1

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

Referenced Sections:
Title 14, Division 7, Chapter 11.1, Sections 18980.1(a)(2), 18980.3.5, 18980.6.6;
Title 14, Division 7, Chapter 11.5, Section 18981 (15-Day Changes)

We submit the following technical comments in response to the 15-Day Changes to the proposed regulations under the Plastic Pollution Prevention and Packaging Producer Responsibility Act. These comments are intended to support regulatory clarity, scientific consistency, and effective implementation of the Act, particularly with respect to compostable covered materials.

1. Alternative Collection and Compostable Materials

Section 18980.1(a)(2) – Definition of "Alternative Collection"

We support the clarification of the definition of "alternative collection" included in the 15-Day Changes. To ensure technical completeness and regulatory consistency, we recommend that CalRecycle explicitly recognize that alternative collection systems may be used to demonstrate appropriate end-of-life management for compostable covered materials.

Compostable materials are designed to be managed within organic waste processing systems rather than traditional recycling infrastructure. As such, alternative collection should clearly encompass privately operated, sector-specific, or closed-loop composting systems, including but not limited to commercial food service operations, institutional settings, industrial composting facilities, and other non-curbside collection models.

Explicit recognition of these systems would align the regulation with real-world waste management practices and support the Act's objectives to reduce plastic pollution while enabling materials designed for organic recovery.

2. Compostability Determinations and Infrastructure Considerations

Section 18980.3.5 – Compostability Determinations

We recommend that CalRecycle clarify that determinations regarding whether a covered material is "eligible for being labeled compostable" should be based primarily on the intrinsic compostability performance of the material, as demonstrated through compliance with recognized standards (e.g., ASTM D6400 or ASTM D6868).

While access to composting infrastructure is an important implementation consideration, conditioning compostability eligibility solely on the current availability of municipal collection infrastructure may unintentionally exclude materials that are technically compostable and environmentally beneficial. Compostable materials are specifically engineered to fully biodegrade in controlled composting environments without generating persistent plastic residues.

Clarifying that compostable materials may rely on alternative collection systems, pilot programs, or phased infrastructure development would ensure that regulatory determinations remain science-based and aligned with the Act's long-term waste reduction and pollution prevention goals.

3. Evaluation of Compostable Materials Relative to Recyclable Materials

Section 18980.6.6 – Covered Material Category Determinations

We recommend that CalRecycle ensure compostable materials are evaluated using performance-based criteria comparable to those applied to recyclable materials. In particular, determinations should account for real-world performance metrics, including actual recovery rates, contamination impacts, and environmental persistence.

Certain recyclable materials may be technically recyclable but demonstrate low collection rates or contribute to contamination in practice. Compostable materials that fully biodegrade in appropriate facilities can provide measurable environmental benefits, especially in applications closely associated with food and organic waste streams.

Explicitly acknowledging these performance considerations in the interpretation of covered material categories would promote data-driven regulatory outcomes and support the pollution prevention objectives of the Act.

4. Environmental Marketing and Qualified Compostability Claims

Chapter 11.5, Section 18981 – Environmental Marketing and Labeling

We support the intent of the 15-Day Changes to prevent misleading environmental marketing claims. We recommend, however, that the regulations allow for the use of qualified compostability claims when such claims are accurate, certified, and clearly specify appropriate end-of-life pathways (e.g., "compostable in industrial composting facilities").

Allowing qualified, standards-based compostability labeling supports transparency and consumer education while ensuring that materials are directed toward appropriate collection and processing systems. This approach is consistent with established environmental labeling frameworks and avoids unintended suppression of accurate, performance-based information.

5. Regulatory Flexibility and Implementation

General Implementation Provisions Affected by the 15-Day Changes

Finally, we recommend that CalRecycle emphasize regulatory flexibility when implementing the revised provisions introduced in the 15-Day Changes, particularly where new definitions or clarifications are provided. Flexibility is essential to enable innovation in material design, collection systems, and processing infrastructure, while maintaining environmental safeguards and accountability.

Such an approach would facilitate continuous improvement and support the successful implementation of the Act over time.

Response to B-2-1

Comment rejected. Other than with respect to the portion labeled "5. Regulatory Flexibility and Implementation," no response is necessary because this comment does not concern revisions in the 15-Day Changes. Regarding that portion, CalRecycle rejects this comment because it makes only the vague recommendation that "CalRecycle emphasize regulatory flexibility when implementing [them]," which is not a recommendation that CalRecycle revise the proposed regulations. Accordingly, no change is appropriate in response to this comment. Even if this portion of the comment was intended as a recommended change, it is too broad and nonspecific for CalRecycle to discern what that recommendation is.

B-3: J. G. Boswell Company (Cameron Boswell)

Comment B-3-1

To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a grower, packer and shipper of fresh produce operating in California.
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging

decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

- No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
- Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
- A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.
Sincerely,
Cameron Boswell
Vice President
J. G. Boswell Company
Pasadena, California

Response to B-3-1

CalRecycle rejects this comment for the detailed reasons articulated under the subheadings below.

In summary, the revisions in section 18980.2(a)(2) clarify the standard for when the exclusion applies, ensuring clarity, uniformity, and transparency in application of the exclusion. As with the previous version of the proposed regulations, the standard is met when it is "not reasonably possible" to use packaging that complies with both the Act and federal laws. That standard tracks the Act's directive that the exclusion applies when there is a "direct conflict" with federal food safety laws. CalRecycle's obligation to implement the statutory standard was the same under the previous version's regulatory text. The clarification enables the exclusion's application by explaining how those claiming that it applies can demonstrate that it does so.

The addition of the word "mandatory" to qualify "regulations, rules, and guidelines" is necessary because only a requirement
can create a direct conflict. But that qualification does not make non-mandatory guidance inapplicable to the process. CalRecycle recognizes federal laws and regulations do not ordinarily require that food and agricultural commodity packaging be of a specific type or use specific designs, materials, or components. Instead, federal laws and regulations set mandatory performance standards. Documents that may not be described as "mandatory" themselves but are guidance, best practices, and recommendations for the specific type, design, material, or components of packaging published by government agencies, industry associations, standards development organizations, or academic institutions, are nevertheless relevant to the exclusion process. They evidence the underlying federal standards that packaging must meet and establish that the packaging for which the exclusion is sought is designed to meet those standards; they may also be informative on the availability and suitability of any alternatives.

Further, the criteria do not require notices to prove that all hypothetical packaging, packaging components, and design options are unsuitable before the notice can give effect to the exclusion. The regulatory language in subparagraph (B) does not lead to that result. Nor are the criteria divorced from the remainder of paragraph (2) or the overall standard of "not reasonably possible . . . to

comply." Moreover, the notice, while it must include the elements set out in subparagraph (B), establishes the exclusion if it is complete and CalRecycle itself is not aware of additional alternatives. Any subsequent process and determination by CalRecycle concerning further evaluation of the exclusion, as set out in subparagraph (E), involves an iterative review process that allows for submission of additional information supporting the exclusion. This process does not require entities to prove a negative.

Finally, an exclusion is not the only available path for relief from the requirements of the Act. The proposed regulations allow businesses to secure exemptions from requirements of the Act when the exclusion under section 18980.2(a)(2) does not apply but there are compelling reasons, such as health and safety concerns, not to use alternative packaging that would be allowed under federal laws. Consistent with statute, the regulations implement those exemptions in section 18980.2.4, and those exemptions can be of considerable duration. While the default duration is two years, they may be valid for five years if circumstances justify that longer duration, and exemptions to address "unique challenges" can be for any duration established by a phase-in plan established to resolve those challenges. Additionally, exemptions are renewable through a non-burdensome process.

Addition of the Word "Mandatory" Is Necessary for Consistency with the Statute, Which Concerns Direct Conflicts with Federal Laws or Regulations

The commenter's objection to the addition of the word "mandatory" effectively requests that packaging be allowed even if there is no conflict with any federal law or regulation. That outcome would contravene Public Resources Code section 42060(b)(2), which refers to "direct conflict with a federal law or regulation" and uses the terms "rules" and "guidelines" as examples of such restrictions, not an expansion of what such restrictions may be. That provision can logically only refer to mandatory provisions of federal law because a merely voluntary provision cannot constitute an obstacle to compliance with both state and federal law.

Nor does the reference to "guidelines" in Public Resources Code section 42060(b)(1) support the commenter's assertions. Even if such "guidelines" included non-mandatory ones, that provision only states that the regulations must "consider" them, not that the regulations must avoid "conflict" with them. In contrast, 42060(b)(1) also says that the regulations must "not conflict with regulations issued by the [FDA] and the [USDA]." The juxtaposition in that sentence between "guidelines," which the regulations must "consider," and "regulations," with which the regulations must not "conflict," undermines the commenter's position that the Legislature intended voluntary guidelines sufficient to render packaging outside the Act's scope. The proposed regulations satisfy the mandate that they "consider" FDA and USDA guidelines that may not be

mandatory by making clear that entities can address the concerns embodied in such guidelines through the exemptions for covered material presenting "unique challenges" (Public Resources Code section 42060(a)(3)) and for covered material that cannot comply with the Act for "health and safety reasons" (section 42060(a)(4)). Section 18980.2.4(c)(4)(A)(ii) makes clear that "unique challenges" may include, for example, technical, legal, or financial challenges, and either exemption may be justified by the necessity to avoid, for example, public health, or environmental risks and the technical or financial limitations of alternatives (see section 18980.2.4(c)(4)(A)(iii) and (iv) and (C)(iii)).

The Proposed Regulation Does Not Assume That Federal Regulations, Rules, or Guidelines Require Use of Specific Packaging

To the extent the commenter's objection to the term "mandatory" is that the term can only refer to requirements that dictate specific packaging materials or designs, the objection is unfounded. Under its plain meaning, "mandatory" is a synonym of "required," and section 18980.2(a)(2) uses the term in that sense only: It refers to any requirement that a federal regulation, rule, or guideline may impose. Referring to regulations, rules, or guidelines as "mandatory" is therefore consistent with how the commenter describes the challenges that packaging for food and agricultural products faces. As the commenter explains, such packaging is subject to "federal requirements," such as "FSMA and FDA food-contact standards" and "food safety requirements."

Nowhere does the proposed regulation imply that "mandatory" has a meaning other than "required," so there is no basis to read section 18980.2(a)(2) to mean that there must be a federal requirement dictating use of specific packaging for there to be a conflict with the Act's requirements. CalRecycle recognizes that the specific type, design, material, or components for food and agricultural commodity packaging is generally not specified in federal laws and regulations, but rather that the laws and regulations set performance standards for the packaging, such as those concerning contamination prevention and the safety of food-contact materials. Those are legal requirements encompassed within the term "mandatory regulations, rules, or guidelines."

The Term "Mandatory" Does Not Render Guidance Documents Irrelevant

To the extent the commenter's objection is that section 18980.2(a)(2) would require businesses to ignore guidance published by a federal agency because the publications themselves are not laws, the objection is unwarranted. An agency publication guiding regulated entities on how to comply with the laws and regulations enforced by the agency may be highly relevant under section 18980.2(a)(2) regardless of whether they may be considered "mandatory." For example, a guidance document may present the only known way of complying with the underlying federal requirements. Guidance documents may also present

examples of non-compliance. Such guidance would be highly relevant to claims that the packaging to be excluded complies with federal requirements and that other packaging would fail to do so.

Similarly, non-mandatory guidance—such as best practices and recommendations for the specific type, design, and material of packaging—issued by government agencies, industry associations, standards development organizations, or academic institutions may also be relevant to exclusions. Entities may rely on such guidance to illustrate the underlying federal food packaging performance standards that the packaging is designed to meet, explain how the packaging to be excluded satisfies them, and highlight how those standards conflict with requirements under the Act.

Addition of Criteria for Meeting the "Not Reasonably Possible" Standard Clarifies the Proposed Regulation

The criteria in subparagraph (B) are necessary to meet the clarity standard in the Administrative Procedure Act and its implementing regulations. By objecting to the establishment of criteria for evaluating what is "not reasonably possible," the commenter effectively suggests that there should be no such standard to begin with. The commenter is incorrect to characterize the revised regulation as "narrow[ing] the definition" of "reasonably possible" because the previous draft of the regulation provided no clear definition, standard, or test for determining whether complying with the Act and federal law is reasonably possible, and the revisions fix that oversight. CalRecycle's obligation to implement the statutory standard was the same under the previous version of the proposed regulatory text, but the text did not state the standard with the necessary clarity. Notably, the commenter does not identify what definition of "reasonably possible" the initial draft of the regulations established, nor does the commenter suggest one. The revised regulation fills that void by providing the test for applying that term, first by explaining that "reasonably possible" refers to the possibility that there is packaging that can avoid the cited conflict with federal law. The commenter objects to that formulation, but that formulation is axiomatic: If it is reasonably possible to avoid the conflict, there is no conflict, and section 42060(b) provides no basis for the packaging to be excluded from the definition of "covered material." The regulation then establishes criteria for how CalRecycle will evaluate whether an entity has shown that a conflict with federal law exists (i.e., that it is not reasonably possible to avoid it). Without such criteria, there would be no uniform and transparent rule governing the exclusion and explaining to businesses how to justify its application. This type of clarity is required by the Administrative Procedure Act and its implementing regulations.

The Revision Does Not Eliminate the Exclusion or Render it Impossible to Obtain. It Ensures That the Scope of the Exclusion Is Consistent with the Statutory Provisions Authorizing It

The commenter incorrectly asserts that the revised regulation "eliminates the categorical exclusion pathway." The criteria established in section 18980.2(a)(2)(B)(i) through (iii) are straightforward, logical requirements that packaging must meet to establish that they must be used despite not complying with the Act's strictures. If any one of those criteria is not met, it cannot be true that simultaneous compliance with the Act and federal law is beyond reach. The commenter claims, in substance, that there is no packaging that can meet the criteria. But that claim is conjecture and based in a misreading of the language of section 18980.2(a)(2), as explained throughout this response Moreover, even if the claim were true, the commenter negates its own opposition: If no packaging could meet the criteria, that would mean that there is no unavoidable conflict with federal law, and there would be no justification under Public Resources Code section 42060(b) for the exclusion to apply.

The commenter also alleges that the proposed regulation will have certain outcomes, none of which support its premise that the regulation leaves no "viable categorical exclusion." The commenter implies that the purpose of the proposed regulations is to relax the restrictions SB 54 imposes. To the contrary, the purpose of the regulations is to implement those restrictions, and the proposed regulations do so while accommodating intractable conflicts with other laws and other types of compliance challenges. The commenter also asserts that SB 54 would impose "[u]nrealistic recycling and recyclability mandates." However, if a mandate is "unrealistic," it will either be not reasonably possible to comply with, so that the exclusion applies, or present challenges that justify an exemption pursuant to Public Resources Code section 42060(a)(3) or (4). Next, the commenter asserts that SB 54 would impose "caps on single-use plastic packaging with no accommodation for business growth." The commenter fails to explain that assertion or how, even if it is correct, that it is specific to the packaging that section 18980.2(a)(2) concerns.

The commenter then asserts that SB 54 would impose "[s]ignificant EPR fees and exposure to civil penalties." That objection, however, is directed at the statute itself, not the proposed regulations. Fees and penalties are a core element of SB 54 and therefore cannot, on their own, be the rationale for it not applying to certain packaging. The commenter points to the burdens inherent in SB 54 and claims, without any basis in the law, that they should not apply. CalRecycle recognizes the potential economic burdens associated with SB 54 compliance, including those for producers of food and agricultural commodities, but must implement the law as enacted. The legislature, in enacting SB 54, imposed those burdens on all single-use packaging but provided a pathway to exclude packaging where there is a direct conflict between a federal food safety law and the Act. The Act itself directs that food packaging will otherwise be considered covered material and subject to the requirements of the Act, but with a pathway for exemptions from requirements of the Act if a unique challenge or

health and safety reason can be shown.

In addition to the reasons set forth below, see CalRecycle's response to comment I-19-1 (submitted in response to the first draft of regulations) regarding the effects of the revisions to section 18980.2(a)(2).

The Proposed Regulation Does Not Require Consideration of Merely Theoretical Alternatives and Does Not Impose an Impossible Burden of Proof

To the extent that this comment and similar comments contend that section 18980.2(a)(2) requires notices to demonstrate that there is no theoretical alternative packaging that could comply with the Act and federal requirements, that contention is unfounded. Other commenters have articulated this argument as being required to "prove a negative." But section 18980.2(a)(2) sets forth a minimally burdensome procedure and cannot reasonably be read to impose an unreasonable standard.

Nowhere does the proposed regulation consider merely theoretical alternatives or achieve an impossible showing of proving a negative. As explained in section 18980.2(a)(2)(A) and (B), notices asserting that packaging is excluded must present the basis for that assertion. To make such an assertion in good faith, an entity must have considered whether any alternative packaging or packaging components that would avoid conflict with the Act's requirements exist. The entity must also have considered whether it is aware of redesign options that would, in effect, be such an alternative.

If there are such alternatives, subparagraph (B) sets forth the conditions that the entity must consider with respect to those alternatives. In effect, the question is whether those alternatives cause any of those conditions to fail. Considered in context with the overall standard of alternatives being "not reasonable possible to use" and the conditions in clauses (i) through (iii) of subparagraph (B), the concept of there being any "alternatives" inherently means that such alternatives are known to be possible, rather than merely theoretical or speculative. If none of the known alternatives can be used successfully, then the conditions set forth in those clauses would be satisfied. Businesses regularly make choices on packaging among the alternatives available to them and are reasonably expected to have up-to-date knowledge of such alternatives.

To the extent the comment is concerns the phrase "creates no new unavoidable legal conflict with any law" in (i) or the references to "all legal conflicts" in (ii) and (iii), those concepts are clear in the context of the regulatory section and as applied. The phrases are intentionally broad to include legal conflicts beyond only those due to federal food safety standards, so that the proposed regulation does not have the effect of deeming an alternative possible despite its use being

unlawful. For example, an alternative packaging type might meet the Act's requirements and meet federal food safety requirements, but it is still not an alternative that precludes an exclusion if using the packaging would infringe on a patent. Similarly, an alternative that meets the Act's requirements and federal food safety requirements is nevertheless not an alternative that precludes an exclusion if a more stringent state law deems its material a contaminant.

The process described in subparagraph (C) makes clear that subparagraph (B) does not create an unreasonable standard mandating speculation about potential alternatives or costly research and development when no alternatives are currently known. Under that subparagraph, CalRecycle cannot reject a notice based on the failure of the business to consider merely hypothetical alternative packaging. Rather, CalRecycle can deem a notice incomplete and require resubmission of the notice if it "identifies packaging" that the notice did not address but that CalRecycle contends would avoid the legal conflict at issue. If a packaging option does not already exist, it would not be possible for CalRecycle to "identify" it.

Further, the express acknowledgment that notices may be resubmitted dispels the notion that subparagraph (B) imposes an impossible standard or, as other commenters have stated this objection, require notices to "prove a negative." The resubmission process makes clear that CalRecycle does not consider even the existence of packaging options that appear to resolve the conflict to conclusively establish those options to be "alternatives." If CalRecycle's identification of such options were sufficient to render the exclusion unavailable, there would be no purpose of allowing resubmission. Rather, resubmission pursuant to subparagraph (C) acknowledges that notices may demonstrate that those options are not existing "alternatives" that would disqualify packaging from the exclusion according to the conditions set forth in clauses (i) through (iii).

Finally, the fundamental nature of a "notice," as opposed to an "application," accommodates the commenter's concerns and establishes that there is no burden for it to "prove a negative." There is no "application" that CalRecycle must evaluate and approve before the exclusion takes effect. Rather, a complete notice triggers the exclusion. Then, the process established in subparagraph (E) means that the ultimate test of the notice's sufficiency is circumscribed by CalRecycle's requests for information, not an evaluation of whether the notice proved a negative.

The Proposed Regulation Does Not Foreclose "Compliance Pathways" such as Liners, Coatings, Closures, or Other Options to Transition Packaging

The commenter claims that notices must prove that "[c]onflicts cannot be resolved through liners, coatings, or closures." Comment O-57-1 makes a

substantially identical assertion, arguing that section 18980.2(a)(2) "no longer reasonably accommodates compliance pathways that are commonly used to safely transition packaging . . . where necessary to meet food safety and food-contact performance requirements." For three reasons, those assertions are erroneous on their face.

First, the basic assertion is unclear. Nothing in section 18980.2(a)(2) mentions "liners, coatings, or closures," and CalRecycle cannot discern the reason the commenter singles them out as alternatives that notices must expressly disprove as alternatives. Nor does the proposed regulation suggest that, when such transitional packaging elements would not resolve the conflict, packaging could not use them as incremental advancements in tandem with pursuit of the exclusion under section 18980.2(a)(2) or an exemption under 18980.2.4.

Second, the assertion's premise is illogical. Even if it were true that entities would need to prove that "liners, coatings, or closures" cannot be used to resolve the legal conflict—which could be the case if CalRecycle identifies such packaging as alternatives that a notice must address because they might resolve the conflict—that would not mean that the proposed regulation eliminates "access to tools that can support the transition to alternatives." Instead, it would mean the opposite. In that scenario, the regulation would encourage use of those tools because they would resolve the conflict.

Third, if the commenter intended to base their objection on the unstated assumption that "tools that can support the transition to alternative packaging" would not comply with the Act, that assumption would support application of the exclusion, not render it unavailable.

In sum, nothing in the exclusion process precludes compliance pathways through the use of liners, coatings, or closures, nor does the process preclude an exclusion when such packaging options cannot resolve the direct conflict.

Exemptions Described in Section 18980.2.4 Are Available for Food Packaging and Can Address Practical Challenges and Risks, Including Health and Safety Risks, Associated with Alternative Packaging

The commenter does not acknowledge that the regulations provide an alternative path for relief from certain requirements of the Act. Specifically, the exemptions addressed in section 18980.2.4 exempt packaging from recyclability/compostability and recycling rate requirements. In many cases, one of the exemptions described in section 18980.2.4 (those pursuant to Public Resources Code section 42060(a)(3) and (4)) would be appropriate to address the scenario where there is no direct conflict with mandatory provisions of federal law even though, as the commenter suggests, alternative packaging would increase the "risk of food waste, contamination, and costsSimilarly, the

commenter cites "[f]ood safety" as the reason why it should not be necessary to demonstrate that "full package redesign" could not avoid all legal conflicts. Under the criteria set forth in 18980.2.4, such limitations could be the basis for an exemption based on "unique challenges" or health and safety. Moreover, the commenter's assertion that "access to tools . . . can support the transition to alternatives" through "advancements and packaging technology advancements" effectively concedes that it will often be possible to formulate phase-in plans to justify the "unique challenges" exemption pursuant to section 18980.2.4.

To the extent that the commenter asserts that exclusions pursuant to section 18980.2(a)(2) are more appropriate than exemptions under section 18980.2.4 because exemptions are time-limited, CalRecycle rejects that assertion. First, exclusions under section 18980.2(a)(2) are also not permanent—their justifications may not remain valid and are subject to review, as described in 18980.2(a)(2)(E)—nor would it be reasonable for them to be. Second, there is no logical reason why time limitations would be inappropriate for exemptions only for food or agricultural commodity packaging. Time limitations for exemptions ensure that exemptions do not continue despite the justification for them no longer applying and preserve incentives for overcoming the obstacles justifying the exemption. The time limitations are therefore necessary to protect the Act's effectiveness, regardless of the packaging at issue. The time limitations are also reasonable and flexible. Exemptions are valid for at least two years but may be approved up to a five-year term. A "unique challenges" exemption may be valid for an even longer period because they may be accompanied by a phase-in plan established to resolve those challenges, and there is no limit on the duration of phase-in plans. Also, all exemptions are renewable. Where all the information and evidence submitted with the application remains accurate and current, a certification to that effect suffices as support for renewal of the exemption.

To the extent the commenter asserts that exemptions under section 18980.2.4 are unsuitable for food packaging because they cannot accommodate the commenter's compliance challenges, CalRecycle rejects that assertion. The exemptions require meeting a different, and arguably less rigorous, standard than "not reasonably possible." With respect to the exemption for "unique challenges," those challenges may include legal and technical challenges and need not render compliance impossible. Rather, the exemption is available when challenges render compliance "impractical." (See section 18980.2.4(f)(2)(A).) With respect to the exemption for health and safety risks, the exemption is available when the risks that would arise from compliance with the Act exceeds the risks that would arise from exempting the covered material.

Finally, to the extent the commenter suggests that the PRO, which is tasked with submission of exemption applications, is disincentivized to move them forward, those suggestions are unfounded. The exemptions do not reduce fees or shift the cost burden in a manner that disadvantages the PRO.

Public Resources Code Section 42060(b) Does Not Authorize Exclusions for Packaging Based on Concerns Other than Conflicts with Federal Requirements

CalRecycle rejects this comment to the extent it asserts that challenges and risks related to food packaging, including technical, economic, environmental, and health and safety risks, can justify exclusion pursuant to Public Resources Code section 42060(b) even when there is no direct conflict between the Act's requirements and a federal requirement. As explained above, the Legislature included express exemptions in the Act (Public Resources Code section 42060(a)(3) and (4)) to accommodate packaging that cannot satisfy the Act's requirements due to such challenges and risks. Construing section 42060(b) to allow exclusion of that packaging based on those same challenges and risks, without there being any conflict with a federal requirement, would mean section 42060(b) effectively supplants the exemptions under section 42060(a)(3) and (4). That result would severely undermine the Act because exemptions, by not changing packaging's status as "covered material," accommodate compliance obstacles while protecting two core principles of the Act. First, they preserve the intended effect of the Act's recycling rate requirements by ensuring that the rates calculated for covered materials accurately reflect the state of recycling infrastructure for single-use plastic. Second, they preserve the Act's intended effect of incentivizing development and use of recyclable, compostable, and reusable packaging.

The Statute Does Not Authorize Unconditional, Categorical Exclusion of Food and Agricultural Goods

To the extent the commenter intended to recommend that the regulation establish a "categorical exclusion" for food and agricultural goods that takes effect based solely on an entity's determination that it applies, without any action by CalRecycle, CalRecycle rejects that recommendation because it violates statutory interpretation principles. The Legislature provided express statutory exclusions from the definition of "covered material" in Public Resources Code section 42041(e)(2). The exclusions demonstrate that the Legislature intended for certain packaging to be unconditionally, categorically excluded. For example, section 42041(e)(2)(B) excludes packaging for pesticide products, and 42041(e)(2)(E) excludes beverage containers. The Legislature defined such exclusions with direct reference to entire categories of relevant goods, not with respect to extrinsic circumstances, such as practicality or legal conflicts, that must be considered and determined to be present for the exclusion to apply to the goods' packaging. In contrast, section 42060(b) does not expressly describe an exclusion for food and agricultural goods as a category. Instead, it requires that CalRecycle consider the potential for conflicts with federal requirements. The major textual differences between these statutory provisions prove that the

Legislature did not intend for them to have the same effect. Accordingly, section 42060(b) cannot be read as an unconditional, categorical exclusion. Instead, CalRecycle reasonably interprets section 42060(b) as authorizing CalRecycle to establish rules for determining when an exclusion is justified because the circumstance described in statute (a conflict with federal requirements) is present.

The Revisions Add Minor Procedural Provisions to Protect Against Inappropriate Applications of the Exclusion

Lastly, without revision, the regulation could have had results that would have drastically undermined the statute by potentially creating a loophole. In particular, the previous draft did not clearly state that CalRecycle could decline to recognize a business's determination that the exclusion applies. Commenters on the previous version pointed out that, without some mechanism for CalRecycle to do so, a business could submit a determination that is patently incorrect, submitted with no justification, or even in bad faith, and thereby inappropriately secure at least 300 days of the exclusion (60 days to respond to CalRecycle's initial request for information, 60 additional days to provide additional information if CalRecycle requests it, and 180 more days before the exclusion would be deemed not to apply. Even then, the previous draft of the regulation did not clearly state that a new determination could not be submitted to again initiate that entire process. The commenter's opposition to CalRecycle closing these loopholes effectively requests that CalRecycle adopt a rule that would allow businesses to repeatedly claim that any packaging—even packaging that is not food and agriculture packaging--is eligible for the exclusion, thereby securing a perpetual exclusion for the packaging.

To the extent the commenter asserts that the revisions impose undue procedural burdens, such assertion is unsupportable. The only significant procedural burden added by the revisions is a burden on CalRecycle, which will have the burden of determining, within 90 days, whether a submission has all required elements and whether there is specific packaging that the submission must address to be considered complete. CalRecycle acknowledges that the 90-day timeline may create a period of uncertainty for the businesses, but the time frame carefully balances the workload for CalRecycle to review the notices for completeness and any burden of the delay in obtaining certainty for the businesses. In contrast, the addition of subparagraph (B) (the criteria for whether use of alternative packaging is reasonably possible) imposes no additional burden. Instead, it only establishes a consistent framework for how submissions must establish the basis for the exclusion (a requirement that was included in the first draft of the proposed regulation) and how CalRecycle will assess that basis. The commenter's objection impliedly suggests that the regulations should not require submissions to establish that the "not reasonably possible" standard (a standard

that was also included in the first draft of the proposed regulations), has been met. That is not a reasonable suggestion.

B-4: Caruthers Raisin Packing Co., Inc. (DENNIS DEE HOUSEPIAN)

Comment B-4-1

THE BILL AS WRITTEN IS UNREALISTIC AND POORLY CONCEIVED. JUST ANOTHER "FEEL GOOD" BILL, THAT SHOWS TOTAL DISREGARD TO PACKAGING AVAILABILITY, COSTS AND MEANS TO COMPETE WITH SUPPLIERS OUTSIDE OF CALIFORNIA, BOTH DOMESTICALLY AND INTERNATIONALLY. THIS BILL WILLFULLY IGNORES THAT CUSTOMERS AND CONSUMERS ARE LOOKING TO KEEP COSTS DOWN, WHICH THIS BILL WILL ACTUALLY DRIVE COSTS HIGHER. SOMETHING THIS BILL IGNORES COMPLETELY. FORCING SUCH LEGISLATION UNTIL SUCH TIME THAT PACKAGING IS AVAILABLE AND COST EFFECTIVE TO ALLOW BUSINESS TO COMPLY, WILL ONLY SERVE TO FOR US TO MOVE OPERATIONS OUT OF THE STATE TO REMAIN COMPETITIVE.

Response to B-4-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-5: Durant Harvesting, Inc. (Laura Domingos)

Comment B-5-1

To CalRecycle:

I am submitting comments on the January 29, 2026, final draft regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act on behalf of my company, a fresh produce packer operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory," coupled with the narrowed definition of what is "reasonably possible," effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety statutes, regulations, and FDA guidance represent the current and widely accepted compliance framework for the fresh produce industry. Packaging decisions are driven first and foremost by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe, functional, and legally compliant.

In addition to food safety, fresh produce packaging serves multiple critical functions throughout the supply chain, including preventing food waste and reducing greenhouse gas emissions, while ensuring the delivery of high-quality fruits and vegetables to Californians. Packaging is essential to maintaining product integrity during harvesting, cooling, transportation, and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency, reducing energy demands across the supply chain
• Maintain airflow, moisture control, and structural stability
• Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

• Reduce spoilage and contamination throughout the supply chain
• Reduce food waste, which directly lowers greenhouse gas emissions associated with food production, transportation, and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated greenhouse gas emissions, directly undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

• No alternative packaging complies with FSMA, FDA food-contact requirements, and California law. While the fresh produce industry continually evaluates alternatives to improve sustainability, most available options do not provide the same functionality as the current industry standard, increasing risks of food waste, contamination, and higher costs to consumers.
• Conflicts cannot be resolved through the use of liners, coatings, or closures. Eliminating access to these tools removes viable pathways for innovation and will hinder advancement in packaging technology.
• A full package redesign would still fail to meet food safety or legal requirements. Food safety remains the highest priority for the fresh produce industry, and packaging redesigns cannot compromise that obligation.

This standard is unworkable and does not reflect real-world food safety, operational, or supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life, or significantly increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates

• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant extended producer responsibility (EPR) fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear and workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and acknowledges the essential role of packaging in food safety, product integrity, waste reduction, and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,

Laura Domingos
Office Manager
Durant Harvesting, Inc.
Santa Maria, CA 93456

Response to B-5-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-6: Durant Distributing, Inc (Laura Domingos)

Comment B-6-1

To CalRecycle:

I am submitting comments on the January 29, 2026, final draft regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act on behalf of my company, a fresh produce distributor operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory," coupled with the narrowed definition of what is "reasonably possible," effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety statutes, regulations, and FDA guidance represent the current and widely accepted compliance framework for the fresh produce industry. Packaging decisions are driven first and foremost by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe, functional, and legally compliant.

In addition to food safety, fresh produce packaging serves multiple critical functions throughout the supply chain, including preventing food waste and reducing greenhouse gas emissions, while ensuring the delivery of high-quality fruits and vegetables to Californians. Packaging is essential to maintaining product integrity during harvesting, cooling, transportation, and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency, reducing energy demands across the supply chain
• Maintain airflow, moisture control, and structural stability
• Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

• Reduce spoilage and contamination throughout the supply chain
• Reduce food waste, which directly lowers greenhouse gas emissions associated with food production, transportation, and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated greenhouse gas emissions, directly undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

• No alternative packaging complies with FSMA, FDA food-contact requirements, and California law. While the fresh produce industry continually evaluates alternatives to improve sustainability, most available options do not provide the same functionality as the current industry standard, increasing risks of food waste, contamination, and higher costs to consumers.
• Conflicts cannot be resolved through the use of liners, coatings, or closures. Eliminating access to these tools removes viable pathways for innovation and will hinder advancement in packaging technology.
• A full package redesign would still fail to meet food safety or legal requirements. Food safety remains the highest priority for the fresh produce industry, and packaging redesigns cannot compromise that obligation.

This standard is unworkable and does not reflect real-world food safety, operational, or supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life, or significantly increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates

• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant extended producer responsibility (EPR) fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear and workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and acknowledges the essential role of packaging in food safety, product integrity, waste reduction, and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,

Laura Domingos
Office Manager
Durant Distributing, Inc.
Santa Maria, CA 93456

Response to B-6-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-7: Destiny Farms, LLC (Laura Domingos)

Comment B-7-1

To CalRecycle:

I am submitting comments on the January 29, 2026, final draft regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act on behalf of my company, a fresh produce grower operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory," coupled with the narrowed definition of what is "reasonably possible," effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety statutes, regulations, and FDA guidance represent the current and widely accepted compliance framework for the fresh produce industry. Packaging decisions are driven first and foremost by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe, functional, and legally compliant.

In addition to food safety, fresh produce packaging serves multiple critical functions throughout the supply chain, including preventing food waste and reducing greenhouse gas emissions, while ensuring the delivery of high-quality fruits and vegetables to Californians. Packaging is essential to maintaining product integrity during harvesting, cooling, transportation, and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency, reducing energy demands across the supply chain
• Maintain airflow, moisture control, and structural stability
• Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

• Reduce spoilage and contamination throughout the supply chain
• Reduce food waste, which directly lowers greenhouse gas emissions associated with food production, transportation, and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated greenhouse gas emissions, directly undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

• No alternative packaging complies with FSMA, FDA food-contact requirements, and California law. While the fresh produce industry continually evaluates alternatives to improve sustainability, most available options do not provide the same functionality as the current industry standard, increasing risks of food waste, contamination, and higher costs to consumers.
• Conflicts cannot be resolved through the use of liners, coatings, or closures. Eliminating access to these tools removes viable pathways for innovation and will hinder advancement in packaging technology.
• A full package redesign would still fail to meet food safety or legal requirements. Food safety remains the highest priority for the fresh produce industry, and packaging redesigns cannot compromise that obligation.

This standard is unworkable and does not reflect real-world food safety, operational, or supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life, or significantly increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates

• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant extended producer responsibility (EPR) fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear and workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and acknowledges the essential role of packaging in food safety, product integrity, waste reduction, and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,

Laura Domingos
Office Manager
Destiny Farms, LLC
Santa Maria, CA 93456

Response to B-7-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-8: Lucky Farms, Inc. (Bryan Cogley)

Comment B-8-1

February 2, 2026

To CalRecycle,

I am submitting comments on the February 2nd, 2026, final draft regulations for the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act on behalf of Lucky Farms, Inc., a California-based grower, packer, and distributor of fresh produce.

We are concerned about the revisions to Section 18980.2 (Categorically Excluded Materials). Specifically, the addition of "mandatory" and the narrowed interpretation of what is considered "reasonably possible" effectively removes the categorical exclusion option for fresh produce packaging.

Fresh produce packaging is governed by federal food safety statutes, regulations, and FDA guidance, which represent the recognized compliance framework for our industry. Decisions about packaging are primarily driven by food safety requirements, including FSMA and FDA food-contact standards, designed to prevent contamination and protect

public health. These federal standards have long served as the baseline for determining whether packaging is safe and legally compliant.

Beyond food safety, packaging is critical to maintaining product quality, reducing food waste, and minimizing greenhouse gas emissions. Fresh produce packaging is highly engineered to:

Protect fragile products from damage during harvesting, cooling, transportation, and handling

Optimize transportation efficiency and reduce energy use

Maintain airflow, moisture control, and structural integrity

Preserve shelf life and overall product quality

Proper packaging also helps manage respiration and moisture, which reduces spoilage and contamination throughout the supply chain. Packaging changes that conflict with federal food safety guidance or compromise product integrity would increase food waste and related greenhouse gas emissions, undermining California's environmental goals.

As currently drafted, the regulation would require producers to demonstrate that:

No alternative packaging can meet FSMA, FDA food-contact requirements, and California law. Many alternatives do not match the functionality of existing solutions, creating higher risks of waste, contamination, and added costs.

Packaging conflicts cannot be addressed through liners, coatings, or closures. Limiting these tools could slow progress in alternative packaging development.

Full redesigns of packaging would still comply with food safety and legal requirements. Food safety remains the highest priority in the fresh produce industry.

This standard is unrealistic and does not reflect the realities of food safety, operational, and supply chain constraints. In many cases, alternatives either do not exist or would increase risk, compromise integrity, shorten shelf life, or generate more waste.

Without a functional categorical exclusion, SB 54 could impose:

Unachievable recycling and recyclability requirements

Permanent caps on single-use plastic packaging without considering business growth

Significant EPR fees and potential civil penalties of up to $50,000 per day per SKU

We respectfully urge CalRecycle to revise the final regulations to reinstate a clear, workable categorical exclusion that recognizes federal food safety guidance as the baseline and acknowledges the essential role packaging plays in food safety, product integrity, waste reduction, and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Bryan Cogley
Operations Manager
Lucky Farms, Inc.

Response to B-8-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-9: Superior Farms (Laura Cruz)

Comment B-9-1

Our protein manufacturing facility supports the environmental goals of SB 54; however, the bill's current packaging requirements create unavoidable conflicts with USDA and FDA food safety standards.

Flexible plastic packaging is the only material that safely protects perishable protein products. Alternatives such as paper or glass cannot meet required durability, barrier protection, or performance needs. Emerging "recycle-ready" materials are not yet validated for high-abuse food supply chains, nor does the U.S. have recycling streams for food-contact flexible films.

Critical materials like nylon and polyester cannot be removed without increasing spoilage and systemwide waste. Eliminating them would significantly raise package failure rates, reduce production efficiency, and ultimately increase emissions—undermining the environmental intent of SB 54.

For perishable foods, the most sustainable packaging is the one that prevents waste and maintains food safety. Without exemptions, SB 54 may unintentionally force choices that increase spoilage, emissions, and regulatory non-compliance.

We respectfully request targeted exemptions where recyclability mandates would compromise food safety or increase overall waste.

I welcome the opportunity to discuss practical solutions.

Response to B-9-1

Comment rejected. No further revisions are necessary because section 18980.2(a)(2) ensures that all packaging implicating food safety concerns will not be considered "covered material" if it is not possible to comply with the Act and federal food safety regulations. To the extent that the commenter's request is that section 18980.2(a)(2) apply when there are food safety and waste concerns despite federal regulations not preventing compliance with the Act, CalRecycle rejects that request because there would be no conflict with federal legal requirements, so the basis for the exclusion in section 18980.2(a)(2) cannot apply. See, also, CalRecycle's response to comment B-3-1, which further explains the basis of 18980.2(a)(2), its scope, and the availability of exemptions. As explained in that response, the mere theoretical possibility of alternatives that comply with federal law does not eliminate the conflict with federal law or otherwise render the exclusion established in section 18980.2(a)(2) unavailable. Moreover, the commenter requests that "exemptions be granted when "recyclability mandates would undermine food safety or increase overall waste," but section 18980.2.4 (implementing Public Resources Code section 42060(a)(3) and (4)) already establishes that exemptions from recyclability requirements are available to address "unique challenges" and health and safety concerns. Further revising section 18980.2(a)(2) to address the commenter's concern would therefore be duplicative.

B-10: Anonymous

Comment B-10-1

I represent a food manufacturing facility serving the State of California.

While I recognize SB 54 and EPR legislation as efforts toward environmental reform, the regulations as currently written will materially impair our ability to operate efficiently while maintaining compliance with USDA and FDA food safety requirements.

There are no commercially viable alternatives to plastic-based flexible packaging for our products. We cannot transition to paper, glass, or other materials without compromising product safety, integrity, and regulatory compliance. Although recyclable or "recycle-ready" resins are under development, there is currently no established recycling stream in the United States for packaging that has been in direct contact with perishable food products. In addition, many of these emerging materials have not been validated for performance in high-abuse supply chains.

Materials such as nylon and polyester are critical to protecting our perishable products. Nylon provides puncture resistance necessary to withstand distribution and handling. Without it, spoilage and failure rates increase significantly (estimated 15–20%). Polyester substrates are essential to maintaining line speeds and operational efficiency.

Removing them would reduce production efficiency by approximately 20–25%, increasing run time, emissions, rework, and spoilage.

The most sustainable packaging solution for perishable goods is one that protects and extends shelf life. This approach aligns with USDA and FDA requirements and helps reduce food waste. In the United States, over one-third of food is wasted. Compromising packaging performance will increase spoilage and overall carbon emissions across the supply chain.

As written, SB 54 may create conflicts with federal food safety regulations. We respectfully request that exemptions be granted where compliance with recyclability mandates would undermine food safety and increase waste.

Response to B-10-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-9-1, which raises the same issues and makes the same request as does this comment.

B-11: Volm Companies, Inc. (Marsha Pozza)

Comment B-11-1

Subject: Comments on SB 54 Final Draft Regulations – 15-Day Comment Period
To CalRecycle:
I am submitting comments on the final draft of the "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation, dated January 29, 2026, on behalf of my company, which is a manufacturer of fresh produce packaging operating in California.
The updated language in Section 18980.2 (Categorically Excluded Materials) is very troubling. Including the word "mandatory" and restricting the meaning of "reasonably possible" essentially removes the categorical exclusion option for fresh produce packaging.
Federal food safety packaging statutes, regulations, and FDA guidance constitute the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.
Beyond ensuring food safety, fresh produce packaging performs several vital roles, such as streamlining the supply chain to reduce food waste and greenhouse gas emissions, and guaranteeing that Californians receive high-quality fruits and vegetables. It is essential for preserving the produce's integrity during harvesting, cooling, transportation, and retail handling. This packaging is highly specialized and meticulously designed to:
• Protect fragile produce from physical damage during transit and handling

• Optimize transportation efficiency to reduce energy demands on the supply chain
• Maintain airflow, moisture control, and structural stability
• Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce fresh longer by managing respiration and moisture. These functions:
• Reduce spoilage and contamination across the supply chain
• Reduce food waste, which directly reduces greenhouse gas emissions from the production, transportation, and disposal of wasted food
Packaging modifications that go against established federal food safety guidelines or weaken package integrity or shelf life can lead to increased food waste and higher GHG emissions, undermining California's environmental and climate goals.
As drafted, the regulation requires producers to demonstrate that:
• No alternative packaging complies with FSMA, FDA food-contact requirements, and California law. The fresh produce industry continually evaluates alternatives to further enhance food quality and safety. Most alternatives do not match the functionality of the industry gold standard, increasing the risk of food waste and contamination and raising costs for consumers.
• Conflicts cannot be resolved through liners, coatings, or closures. Removing access to tools that support the transition to alternative packaging will stifle advancements in packaging technology.
• A full package redesign would still fail to meet food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is impractical and fails to accurately represent real-world food safety, operational limitations, and supply-chain challenges. Often, alternative materials are either unavailable or could raise contamination risks, weaken package integrity, reduce shelf life, or lead to more food waste.
Without a viable categorical exclusion, SB 54 would impose:
• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodations for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day per SKU
I kindly encourage CalRecycle to update the final regulation to re-establish a clear and practical categorical exclusion. This should acknowledge federal food safety packaging guidance as the preferred compliance route and highlight the important role of packaging in ensuring food safety, maintaining package integrity, reducing waste, and lowering greenhouse gas emissions.
Thank you for taking these comments into consideration.
Sincerely,
Marsha Pozza
Director of Marketing & Communications
Volm Companies, Inc.

Response to B-11-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

B-12: HMC Farms (Chelsea Ketelsen)

Comment B-12-1

To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, HMC Farms, fresh produce operating in California.
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.
In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
• Protect fragile produce from physical damage during transit and handling
• Optimize transportation efficiency which reduces energy demands on the supply chain
• Maintain airflow, moisture control and structural stability
• Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
• Reduce spoilage and contamination across the supply chain
• Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.
As drafted, the regulation requires producers to prove that:
• No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.

• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:
• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Thank you for considering these comments.
Sincerely,
Chelsea Ketelsen
Director of Marketing
HMC Farms
Kingsburg, CA

Response to B-12-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-13: Lakeside Organic Gardens (Juan Gonzalez)

Comment B-13-1

To CalRecycle:
I am submitting these comments regarding the January 29, 2026, final draft regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act. I submit these comments on behalf of my company, Lakeside Organic Gardens, a California-based grower, packer, and shipper of fresh produce that supplies both in-state and national markets.
While I support the stated goals of reducing plastic pollution and improving recycling outcomes, the current draft regulations—particularly the revisions to Section 18980.2 governing Categorically Excluded Materials—create serious and unworkable conflicts for the fresh produce industry.
Elimination of a Workable Categorical Exclusion
The revised language in Section 18980.2 effectively eliminates the categorical exclusion pathway that previously recognized the unique food safety and operational realities of fresh produce packaging. The introduction of the word "mandatory" and the narrowed interpretation of what is "reasonably possible" impose an evidentiary burden that is

impractical, legally risky, and disconnected from how food safety compliance actually functions in real-world agricultural operations.

Fresh produce packaging is governed first and foremost by federal food safety requirements, including the Food Safety Modernization Act (FSMA), FDA food-contact regulations, and related guidance. These requirements exist to prevent contamination, protect public health, and ensure that food reaches consumers in a safe condition. Packaging choices are not discretionary—they are integral components of a validated food safety system.

Requiring producers to prove, on a package-by-package basis, that no conceivable alternative material could ever comply with these federal requirements places growers and packers in an untenable position and exposes them to unacceptable regulatory and liability risk.

Packaging Is a Food Safety and Waste-Reduction Tool

Fresh produce packaging is not simply a marketing or convenience choice. It is a technical, engineered system designed to:

• Protect fragile commodities from damage during harvest, cooling, transportation, and retail handling
• Maintain airflow, moisture balance, and structural integrity
• Manage respiration to extend shelf life
• Reduce spoilage, contamination, and product loss across the supply chain

These functions directly reduce food waste. Increased food waste results in higher greenhouse gas emissions from wasted production inputs, transportation, refrigeration, and disposal—undermining California's environmental and climate objectives. Packaging changes that compromise food safety, package integrity, or shelf life will increase waste, raise costs for consumers, and disrupt reliable access to fresh fruits and vegetables.

The Revised Standard Is Not Practically Achievable

Under the current draft, producers must demonstrate that:

• No alternative packaging complies with FSMA, FDA food-contact rules, and California law
• Conflicts cannot be resolved through liners, coatings, or closures
• Even a complete package redesign would still fail food safety or legal requirements

This standard ignores the reality that many alternative materials either do not exist at commercial scale, do not perform adequately in wet or cold-chain environments, or introduce new contamination and quality risks. Prohibiting the use of liners, coatings, or closures as compliance tools removes pathways for innovation rather than encouraging it.

Severe Economic and Operational Consequences

Absent a functional categorical exclusion, the regulations would impose:

• Unrealistic recyclability and recycling-rate mandates for food-contact packaging
• Permanent caps on plastic packaging with no accommodation for business growth, seasonality, or market demand
• Significant and open-ended EPR fees set by a Producer Responsibility Organization
• Exposure to civil penalties of up to $50,000 per day, per SKU, and potential packaging bans

For fresh produce operations operating on thin margins, these requirements represent substantial financial risk and could force packaging decisions that are inconsistent with food safety best practices.
Requested Revisions
I respectfully urge CalRecycle to revise the final regulations to:
• Restore a clear, workable categorical exclusion pathway for fresh produce packaging
• Recognize compliance with federal food safety packaging requirements as the appropriate benchmark
• Allow reasonable use of liners, coatings, and closures to resolve material conflicts
• Ensure that environmental goals are pursued without increasing food waste, safety risk, or consumer costs
A balanced approach can and should protect public health, maintain food system reliability, and advance California's environmental objectives.
Thank you for the opportunity to submit these comments and for your consideration of the unique challenges facing California's fresh produce industry.
Sincerely,

Juan Gonzalez
Chief Operating Officer
Lakeside Organic Gardens
Watsonville, CA

Response to B-13-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-14: Costco Wholesale #210 (Howard Welte)

Comment B-14-1

Howard Welte
Costco Wholesale Corporation loc#210
17880 West Schulte Road
Tracy CA 95377
(209)221-6208
WE are a Ground Beef manufacuring plant that processes Beef trims into patties, Hot dogs, and Meat balls and package them into flexible packaging (PE bage ,or polyester/PE and nylon/PE laminated films). We purchase the plastic items from out of state suppliers. Does that make us the producer ?

Response to B-14-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment B-14-2

Also We are a USDA/FSIS inspected plant does that make us exsempt ?

Response to B-14-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment B-14-3

Costco also has multible plants in california, do we need to report by location or company?

Response to B-14-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-15: Bright and Green (Carly Tambling)

Comment B-15-1

I strongly support SB 54's direction. However, I would like to encourage the Department to strengthen the implementation guidance within the regulations to ensure these goals are achieved without unintended negative impacts on small businesses, local governments, and community operators. This includes standardizing data collection systems and the reporting frameworks used to measure impact, so compliance is clear, consistent, and achievable.

System change can fail not because goals are incorrect, but because pathways are unclear.

I recommend that the Department incorporate or reference practical, minimum-viable guidance that shows how entities can move from single-use systems toward reuse in a realistic, phased way. This includes:

Recognizing simple 3-sink basin washing as a minimum, accessible baseline for reuse and food service ware washing

Providing guidance or references to existing sources of reusable service ware

Identifying wash hubs, commissary kitchens, or shared washing infrastructure as viable compliance pathways

Acknowledging the role of implementation consultants and reuse service providers who support planning, logistics, education, and compliance

Offering clear "if you currently use disposables, here is how to start" pathways rather than assuming full system redesign at once

Circular economy systems work best when they are shown, not just required. For example, bring-your-own container programs alone are not sufficient when establishments have legitimate concerns about food safety and liability. Clear regulations paired with practical implementation guidance will::
Reduce compliance confusion

Accelerate reuse adoption

Ensure SB 54's goals translate into real, on-the-ground success

SB 54 will be strongest when it not only sets expectations, but also shows the way forward.
Best Regards,
Carly Tambling
Bright & Green
Arcata, California

Response to B-15-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-16: Lucky Farms, Inc. (Bryan Cogley)

Comment B-16-1

From: Bryan Cogley
Sent: Monday, February 2, 2026 2:42 PM
To: CalRecycle Public Affairs
Subject: Comments on SB 54 Final Draft Regulations – Lucky Farms, Inc.

Caution: This email originated from outside of the organization. Do not click links or open
attachments unless you recognize the sender and know the content is safe.

February 2, 2026

To CalRecycle,

I am submitting the following summary comments on the January 29, 2026, final draft regulations for the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act on behalf of **Lucky Farms, Inc.,** a California-based grower, packer, and distributor of fresh produce.

Lucky Farms is concerned that revisions to Section **18980.2 (Categorically Excluded Materials),** particularly the addition of the term “mandatory” and the restrictive

interpretation of what is “reasonably possible,” effectively eliminate the categorical exclusion for fresh produce packaging. As drafted, the provision does not reflect the realities of food safety, supply chain operations, or available packaging technology.

Fresh produce packaging is governed primarily by federal food safety laws and FDA guidance, including FSMA and food-contact material standards. These requirements exist to protect public health and represent the established and widely accepted compliance framework for the produce industry. Packaging decisions must prioritize contamination prevention, product integrity, and consumer safety.

In addition to food safety, produce packaging plays a critical role in maintaining quality, reducing food loss, and minimizing greenhouse gas emissions. Packaging is carefully designed to protect fragile commodities, maintain airflow and moisture balance, preserve shelf life, and optimize transportation efficiency. Packaging systems that compromise these functions will increase spoilage and food waste, directly undermining California’s environmental and climate objectives.

The current regulatory language places an unworkable burden on producers to demonstrate that no alternative packaging could meet food safety, legal, and operational requirements, even where such alternatives are not commercially viable or would increase contamination risk and food waste. This standard does not align with real-world agricultural and distribution practices.

Without a functional categorical exclusion, SB 54 risks imposing recycling mandates and
material restrictions that conflict with food safety requirements, limit operational growth, and expose produce companies to significant fees and penalties without delivering corresponding environmental benefits.

Lucky Farms respectfully urges CalRecycle to revise the final regulations to restore a clear and practical categorical exclusion that recognizes federal food safety standards as the appropriate benchmark and acknowledges the essential role of packaging in food safety, waste reduction, and greenhouse gas mitigation.

Thank you for the opportunity to provide these comments.

Best regards,

Bryan Cogley
Operations Manager
Lucky Star Marketing, Inc.
1194 E Brier Dr.
San Bernardino, CA 92408
Mobile: (909) 580-7626
Company Phone - Main Office: (909) 799-6688 - EXT 143
Company FAX: (909) 363-7410

Email: Bryan.C@LuckyStarMarketing.com

Response to B-16-1

CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same concerns and offers the same recommendation as does this comment.

B-17: LK Packaging (Doron Chertkow)

Comment B-17-1

We are ok with the most recent proposed changes to SB 54, as long as no additional ones are planned.

Response to B-17-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-18: Main Street Produce (Dan Piester)

Comment B-18-1

Subject (optional): Comments on SB 54 Final Draft Regulations – 15-Day Comment Period

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a [grower/packer/shipper/distributor] of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain
Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.
As drafted, the regulation requires producers to prove that:
No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:
Unrealistic recycling and recyclability mandates
Permanent caps on single-use plastic packaging with no accommodation for business growth
Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

Thank you for considering these comments.
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Sincerely,
Dan Piester

General Manager
Main Street Produce LLC
Santa Maria, CA

Response to B-18-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-19: Anthony Vineyards, Inc (Domenick Bianco)

Comment B-19-1

Please see our letter of strong opposition to the current language in Section 18980.2

Response to B-19-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment B-19-2

February 2, 2026

Dear CalRecycle,

Anthony Vineyards Inc. submits these comments regarding the Jan. 29, 2026, SB 54 draft. We are deeply concerned that the revised language in **Section 18980.2** effectively eliminates the categorical exclusion for fresh produce packaging, creating a standard that is operationally and technically unworkable.

The addition of the word "mandatory" and the narrow definition of "reasonably possible" ignore three critical realities:

· **Federal Compliance:** Our packaging is governed by the Food Safety Modernization Act (FSMA) and FDA standards. These federal benchmarks are essential for preventing contamination. The regulation must recognize federal law as a sufficient compliance pathway.

· **Environmental Impact:** Fresh produce packaging is engineered to manage respiration and

moisture. Replacing these materials with unvetted alternatives will increase food spoilage and
greenhouse gas emissions, directly contradicting California's climate and waste reduction goals.

· **Economic Viability:** Without a functional exclusion, producers face significant EPR fees and
potential civil penalties of $50,000 per day, per SKU. These costs threaten California's agricultural
supply chain and will increase food prices for consumers.

The current requirement for producers to prove that no hypothetical redesign could ever meet safety
standards is an unrealistic evidentiary hurdle.

**Anthony Vineyards Inc. respectfully urges CalRecycle to restore a workable categorical exclusion
that recognizes the essential role of packaging in food safety and waste mitigation.** We ask that the
Department align these regulations with the practical constraints of the fresh produce industry.

Sincerely,

Domenick Bianco
Owner/President
Anthony Vineyards Inc.

Response to B-19-2

Comment rejected. Section 18980.2(a)(2) expressly does "recognize federal law as a sufficient compliance pathway." Unless food packaging can meet federal requirements, section 18980.2(a)(2) excludes it from the definition of "covered material." See, also, CalRecycle's response to comment B-3-1, which raises the same concerns and makes the same recommendation as does this comment. As further explained in that response, section 18980.2(a)(2) does not require proof that "no hypothetical redesign could ever meet safety standards."

B-20: Alta Vista Farms (Chris Matthews)

Comment B-20-1

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a grower of fresh berries operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain
Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.

Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.
This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

Unrealistic recycling and recyclability mandates

Permanent caps on single-use plastic packaging with no accommodation for business growth

Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Chris Matthews
Alta Vista Farms

Response to B-20-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-21: Terry Berries (Martha Brownlee-Terry)

Comment B-21-1

Comments on SB 54 Final Draft Regulations – 15-Day Comment Period

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act” regulation on behalf of my company, a small/medium sized farm of fresh produce operating in California.

The agricultural industry cannot withstand more regulations and more fees. That's all we have seen from every regulatory body in California for the last 18 years. Many of the regulations we see do not make sense or conflict with other regulations. This is one of those that is conflicting and unnecessary. Food Safety is a very serious issue that must take precedence over this proposed regulation.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

- No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.

• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:
• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.
Sincerely,

Martha Brownlee-Terry
Willal, Inc.
Ventura, CA

Response to B-21-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-22: ogCompanies (Thea Eubanks)

Comment B-22-1

ogCompanies(Thea Eubanks)

Response to B-22-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment B-22-2

The updated draft of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation effectively eliminates the categorical exclusion pathway for fresh produce packaging.
We truly believe the way this regulation is proceeding, we are headed down a path of virtually eliminating all fresh cut produce from consumer shelves negatively impacting the health of consumers.
Unachievable mandates:
Sets mandatory reduction requirements in both weight and number of plastic packaging components (10% by 2027, 25% by 2032)
Sets mandatory recyclable/compostable packaging directives that if not met by 2032, deems the packaging illegal to sell in CA.
ARTICLE 2 – Categorically Excluded Materials (Section 18980.2)
Addition of the word "mandatory" dramatically raises the burden of proof
Narrow definition of what is "reasonably possible" under Section 18980.2(a)(2)(B)

Response to B-22-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same objections to section 18980.2(a)(2) as does this comment. To the extent the commenter's reference to recyclability, compostability, and source reduction requirements as "unachievable mandates" does not concern section 18980.2(a)(2), no further response is necessary because no other relevant provisions of the proposed regulations have been revised.

Comment B-22-3

Additional concerns:
Packaging elimination compromises food safety and traceability, negatively affecting public health
It will ultimately increase food waste in the system and negate any environmental gains.
The current packaging protects the product from cross contamination in the supply chain and maintains the quality of fresh produce which is critical in a balanced, healthy diet.
Alternative packaging does not yet exist that meets our functionality needs to ship products from growing regions to consumers that are fresh and safe to eat, which in turn impacts consumers and their accessibility to fresh produce.
The costs are significant and cannot be absorbed by producers.
It increases packaging cost 10-20% and will result in a 5-10% finished good markup for the consumer.
This has not been transparently communicated to the consumer.
There is no public communication so the general public can understand the financial impact that they must bear as a result of the finished goods markup.
4 additional US states coming online in 2026 – Maine, Maryland, Minnesota, Washington

Response to B-22-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-23: Latitude 36 Foods (Michelle Shaw)

Comment B-23-1

Subject: Comments on SB 54 Final Draft Regulations – 15-Day Comment Period

To: CalRecycle

Latitude 36 Foods packages portion-controlled food components for fresh salad kits, meal kits, snacks, and foodservice. The company converts bulk ingredients into small, sealed portion sizes at commercial scale to meet food safety, quality, and shelf-life requirements.

For example, in a typical master kit, Latitude 36 Foods purchases croutons, cheese, and seasoning in bulk, along with pre-portioned dressing sachets. These components are portioned as needed and assembled into a finished master pack that is supplied to customers for use in fresh salad kits.

Packaging Functionality and Technical Constraints

Our portion packs and master packs primarily utilize **OPP-based films** for dry, shelf-stable products. For meat, cheese, and seasoning applications, packaging film incorporate **EVOH or other multi-polymer structures** to achieve the oxygen and moisture barrier performance required for fresh food applications at commercial scale. These materials are selected based on demonstrated performance in high-speed production environments and validated shelf-life studies. Latitude 36 Foods has invested significant time and resources testing mono-material packaging alternatives in support of recyclability and circular economy goals. However, for small-format portion packs, our testing has consistently shown that mono-material structures introduce material risks, including:

• Reduced oxygen and moisture barrier performance compared to OPP/EVOH structures
• Increased risk of microbial growth, oxidation, and flavor degradation
• Higher seal failure and leakage rates at commercial production speeds

Latitude will continue to test and invest additional resources as this journey evolves, and more viable sustainable packaging options become available.

In addition to in-house portioning, Latitude 36 Foods also purchases **pre-portioned sachets** of dressings, cheeses, and other components from manufacturers across the United States. These sachets are then incorporated into our finished master kits.

Many of these upstream manufacturers rely on similar multi-material films to meet food safety, shelf-life, and sealing requirements. Currently, these suppliers are still working towards having a viable mono-material alternatives that meet performance and regulatory standards for these applications. The current SB 54 draft regulations do not account for this supply-chain reality.

Requiring immediate or near-term compliance without a workable categorical exclusion would:
• Disrupt national supply chains for pre-portioned food components
• Limit availability of compliant ingredients for California-bound products
• Force redesigns that upstream suppliers are not technically or commercially prepared to implement
• Create downstream impacts for retailers and consumers through reduced product availability, higher costs, and increased waste

Concerns with the Revised Categorical Exclusion Standard
The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word **"mandatory"** and the narrowed definition of what is **"reasonably possible"** effectively eliminate a workable categorical exclusion pathway for applications like ours.
The requirement to prove that:
• No alternative packaging provides effective qualitative performance expected through product shelf life to satisfy customer and consumer expectations.
• A full package redesign would still fail qualitative performance, food spoilage management, safety, or legal requirements while incrementally decreasing operational and supply-chain effectiveness
does not reflect real-world food safety, operational, or supply-chain constraints for portioned food packaging.
For these applications, limited multi-material structures are **functionally necessary, not discretionary.** Forcing the adoption of lower-barrier materials would increase contamination risk, shorten shelf life, increase food waste, and undermine California's climate and environmental objectives.
Request
Without a viable categorical exclusion, the current draft regulation would subject companies like ours to unrealistic recyclability mandates, permanent caps tied to historical baselines with no accommodation for significant compliance and enforcement risk despite good-faith efforts to improve packaging sustainability.
Latitude 36 Foods respectfully urges CalRecycle to revise the final SB 54 regulations to restore a clear, workable categorical exclusion that:
• Recognizes federal food safety and qualitative performance standards as the appropriate compliance benchmark
• Allows limited multi-material packaging structures where necessary for food safety, product quality, and shelf life, while minimizing food waste
• Acknowledges the operational and supply-chain realities of portioned food packaging
• Acknowledges the technical limitations of mono-material packaging for small-format, high-barrier food applications
• Accounts for supply-chain dependencies, including reliance on upstream suppliers that do not yet have compliant mono-material alternatives
• Avoids unintended consequences that could disrupt national food supply chains or limit product availability in California
• Provides regulatory certainty for companies making good-faith efforts to improve packaging sustainability

Preserving this flexibility is essential to protecting public health, minimizing food waste, and achieving the Act's environmental goals.

Sincerely,

Leslie Surber
President
Latitude 36 Foods

Response to B-23-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same concerns as does this comment. As further explained in that response, the revisions to section 18980.2(a)(2) do not narrow the exclusion or render it unattainable. Moreover, the commenter's concern over packaging that is "functionally necessary, not discretionary," is misplaced because if packaging is necessary and cannot comply with the Act, it would either be excluded under section 18980.2(a)(2) or would likely qualify for an exemption under section 18980.2.4. Regarding the list of functions that the commenter requests that section 18980.2(a)(2) address, those functions are unaccompanied by particular changes for CalRecycle to consider with respect to each one. However, CalRecycle interprets the commenter's overall recommendation to "restore a clear, workable categorical exclusion" to mean that the version of section 18980.2(a)(2) in the 45-Day Changes would address that list. For the reasons set forth in response to comment B-3-1, CalRecycle declines to restore that version.

B-24: GoodFarms, Inc. (Alan Thorne)

Comment B-24-1

Subject: Comments on SB 54 Final Draft Regulations - 15-Day Comment Period
To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a grower/packer/shipper/distributor of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations, and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public

health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

Over decades, the produce industry has optimized packaging systems to ensure food safety, maintain quality, and reduce food waste across a complex supply chain. This supply chain often includes harvesting and packing directly in the field, where materials must withstand extreme weather, moisture, dust, handling stress, and extended transit before reaching retail. Fresh produced packaging is highly technical and carefully engineered to:

- Protecting fragile produce from physical damage during transit and handling
- Optimize transportation efficiency, which reduces energy demands on the supply chain.
- Maintain airflow, moisture control, and structural stability.
- Preserve shelf life and product quality.

- Keep produce alive longer by managing respiration and moisture.
- Reduce spoilage and contamination across the supply chain.
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation, and disposal.

The current draft would incentivize rapid shifts to alternative materials that are unproven at commercial levels or unable to provide the same level of product protection as existing packaging. In practice, this would lead to higher rates of product damage, shorter shelf life, and increased spoilage. The environmental consequence of this outcome would be counterproductive. Increased food waste results in higher greenhouse gas emissions from wasted production inputs, transportation, refrigeration, and disposal, ultimately undermining California's environmental and climate objectives. As drafted, the regulation requires producers to prove that:

- No alternative packaging complies with FSMA, FDA food-contact requirements, and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, increasing the risk of food waste, contamination, and higher costs for consumers.
- Conflicts cannot be resolved through liners, coatings, or closures. Removing access to tools that can support the transition to alternative packaging will stifle advancements in packaging technology.
- A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

The produce industry is not resistant to change. Growers, packers, and distributors continue to evaluate and test new materials and formats to improve environmental performance. However, solutions that meet food safety requirements, perform across the full supply chain, and reduce overall environmental impact have not yet reached the required scale. Advancing regulations that effectively eliminate the categorical exclusion

before such alternatives exist will not drive innovation. Instead, it will push the industry backward, increasing food waste and operational risk.

Without a viable categorical exclusion, SB 54 would impose:

- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction, and greenhouse gas mitigation.

Thank you for considering these comments.
Sincerely,
Alan

Response to B-24-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-25: Coast Beacon (Sang Phan)

Comment B-25-1

Hello,
We're a wholesaler / importer of seafood that uses paper and plastic in packaging. Majority of our customers are other smaller wholesalers who may sell our products in California and in the other states that do not have EPR (Arizona, Texas, etc.) Their customers may in turn do the same. This process may repeat several times as it's common in seafood trading.

I'm OK with reporting the TOTAL amount we import into California and paying one-time EPR fee on them. I'm concerned with the prospect of multiple downstream layers of customers reselling the same products that I have reported and paid for and the state will mandate me to not only report on them but also pay EPR fee again on them. The nature of "double taxation" is both unfair and adds uncertainty which can be financially detrimental to our company. An example is that we pay $0.05/lb on the total import into CA. We can treat this as the cost of doing business and incorporate it into our price. This is clear and fair. However, under the current regulation, we will be asked to pay x times this fee if the products are resold multiple times. If the fee gets to $0.15/lb or

more, we will be losing money, potentially putting us out of business, risking job losses and tax losses (sales, income, corporate, etc.) to the state.

Response to B-25-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-26: Horizon Ag-Products (Peyton Bynum)

Comment B-26-1

I work for Horizon Ag-Products, and we are attempting determine if we are subject registering with CAA for the packaging producer responsibility reports and fees.
We produce soil amendments and fertilizers that are packaged in supersacks, totes, and bottles.
Around 95% of our product is purchased by another company who places our material into their blends. That company does have locations in California that we ship to. Would we be responsible for reporting all of that packaging? Or just the other 5% that goes out with our name on it?
Additionally, I was wondering if there are exemptions for products such as bags produced with an enzyme that helps them break down faster.
Any guidance you can provide would be appreciated.

Response to B-26-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-27: Repurpose, Inc. (Lauren Gropper)

Comment B-27-1

California Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street Sacramento, CA 95814
Re: SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations
To CalRecycle,
I'm writing as the Founder & CEO of Repurpose, a California C-Corp with headquarters in Los Angeles, California. We have 25 employees and have been in business for 15 years. We manufacture and distribute compostable household goods through 15,000 retailers nationwide including Costco, Target, Amazon, Kroger and Albertsons. We have been at the forefront of educating and providing consumers with plant based, compostable and non toxic alternatives to single use household products. The proposed language will have a significant negative impact on our Company, to the point of

closure, as well as harming markets nationwide and hurting consumers that want clearly labeled sustainable products and packaging.

As a champion of its goal to make all covered products and packaging in California reusable, recyclable, or compostable by 2032, we'd like to respond to challenge the validity of the proposed regulations, as they remain inconsistent with both statutory text and existing California law PRC Chapter 5.7.
We also highlight specific issues that render the proposed regulations inconsistent with available scientific evidence, despite CalRecycle's duty to protect human health and the environment.

We appreciate that CalRecycle continues to take industry feedback and has incorporated previous recommendations that support the environmental goals of SB 54. As the rulemaking moves towards finalization, Repurpose continues to have concerns with the proposal. Thank you for your responsiveness to these priorities as we work together to foster an improved packaging ecosystem in California.

Section 18980.1 (Definitions)

We request the addition of a separate definition of "polymers" and repeat the following: The definition of "polymer" should be defined as in ASTM D883 to reflect both the intent and the language in the existing statute. It should be noted that the ASTM D883 definition is referenced for the meaning of "polymer" in both ASTM D6400 and ASTM D6868. It remains imperative that CalRecycle define "polymers" separately from "plastics" for the purposes of this regulation because plastics are articles made from a small subset of polymers—polymers are simply long-chain molecules and can be found in nearly every item in our daily lives. By not defining "polymers", the very narrow exemption to meet safety and performance criteria in current statute enshrined as PRC 42356.1(d) is now a very wide one. Polymers are likely included in most certified compostable products, especially fiber-based products, to some extent; this is why we have a certification to ASTM standard specifications to ensure that they are biodegradable, do not negatively impact disintegration, and do not add any toxic effects. Should this definition not be properly addressed, the inevitable result is that companies that do all the careful product design and testing to ensure integrity of the resulting compost will have to compete with companies that need not. We already know that products containing non-biodegradable polymers end up in composting facilities, filled with untested and unknown components, and threatening the integrity of soil in California is at risk. As such, the proposed regulations need to include a specific definition of "polymers" and the definition of "plastics or polymers" should refer to this definition of polymers to differentiate between compliant products that support high quality compost and the untested, persistent, and toxic products that threaten it.
We iterate: rationale previously provided by the department in the ISOR document misunderstands the statute in multiple ways. First, the need to test and certify products with polymers is not limited to the "rate of composting." The relevant ASTM standard specifications include requirements for ecotoxicity and constituents, in addition to

biodegradation and disintegration, all of which are necessary to protect the quality of the resulting compost. Furthermore, the claim that fiber is itself a polymer does not change the need for other "incorporated" polymers to be tested. It has always been intended and understood that the exemption for paper and fiber-based products without polymers applies only to an extremely narrow subset of products such as wooden stir sticks. This is also why certification entities like BPI require testing for countless uncoated paper and fiber products, to prevent persistent and/or toxic elements from being introduced into compost. CalRecycle has ignored the clear purpose of the law for the purpose of drawing an arbitrary distinction between product types.
Section 18980.2.2 (Exclusion of Certain Types of Packaging)

We remain concerned about the exclusions for "de minimis" elements as the language is inappropriate and vague as it relates to compostable products. Unlike recyclable products that can often be deconstructed to remove non-recyclable components, any "size" or "weight" of non-compostable components within covered products, regardless of "weight or volume," can persist as a contaminant in a compost pile. Fortunately, SB 54 references existing California law (PRC Chapter 5.7), including standard specifications such as ASTM D6400 and D6868 that already set pass/fail criteria to prove the performance of compostable items. This includes testing for biodegradation, which is a microscopic process and cannot be measured in a compost facility but rather requires laboratory testing, in addition to separate laboratory testing for ecotoxicity. ASTM D6400 and D6868 are the appropriate standard specifications, and an element should be considered "de minimis" only if it complies with these standards.
All mention of "composting" and "compostable" should be removed from this de minimis allowance, and that components small in weight and/or size are adjudicated as part of a whole product, as covered by existing law designed for this purpose. Alternatively, we request that the relevant provisions be revised to clarify that an element be considered "de minimis" only if the whole product still complies with ASTM D6400 and D6868. Without one of these corrections, the applicable provisions create uncertainty and allow for products to be considered compostable for purposes of the proposed regulations even if they do not meet these strict standards that ensure such products do not cause harm to human health or the environment.
Section 18980.4 (Responsible End Market Criteria)
Statute affirms that responsible end markets must be defined "in a way that benefits the environment and minimizes risks to public health and workers." Yet, compostable covered products are suggested to have different end market requirements despite being tested to identical standards guaranteeing environmental benefit and public health. This is especially confounding given that compostable products are not typically separated out by type into distinct batches of compost, unless CalRecycle recommends that such bifurcation would be conducted with funding from this program.
We also remain alarmed that compost facilities as end markets are not required to provide the conditions necessary to responsibly process covered compostable products into a stable and mature finished compost.

Section 18980.4(a)(4)(C) does not require items comprised of fiber or paper substrates (that may contain persistent polymeric components) to fully break down, creating

unequal treatment of material types that not only betrays the underlying science of compostability, it also betrays PRC Chapter 5.7 of California law that requires paper and fiber products containing any plastic or polymer to undergo testing and certification. Removing the entirety of section 18980.4(a)(4)(B)-(C), including "fully biological decompose," solves this and ensures that compostable paper or fiber products are clearly defined, while contaminants are clearly separated.

Furthermore, while a "marketable" compost product as described in section (C) might ensure proper pathogen reduction, etc., the term is insufficient for ensuring conditions necessary for compostable products to break down. By not establishing relevant criteria, CalRecycle is risking substantial harm to the environment, and acting contrary to the text and principles of SB54. We request that this section 18980.4(a)(4)(B)-(C) therefore be removed and replaced by recently published field-testing test methods ASTM D8618 or D8619 provide clear ranges of operating conditions, based on general practices for composting (that aren't unique to compostable products) and clear thresholds for compost stability and maturity. By simply requiring composters to submit an ASTM D8618 or D8619 test report to show that suitable operating conditions are met, a stable and mature compost is produced, and compostable products can confidently break down. This will ensure that composting facilities receiving funding are designed and operated to manage certified compostable products in the program and therefore are "responsible."

Finally, we reiterate that the previously published ISOR incorrectly states that certified compostable plastics cannot be a "recycled organic product," even though by definition, compostable plastics are made of organic carbon that is fully consumed by microorganisms, as evidenced by biodegradation testing that counts carbons, just like other compost feedstocks.

Section 18980.11.1. (Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers)

As stated previously, we support the consideration of "program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; and transportation safety." However, these extensions and exemptions fail to consider whether such limitations, requirements, or effects can be mitigated by funding from the program itself, despite the entire program being engineered to create such opportunities. We also remind the department once more that all lawfully labeled compostable products are tested and certified based on the same conditions. Therefore, a local jurisdiction or service provider that requests an exemption for one material or covered product type, but not another, based on performance claims, could not do so credibly without providing a detailed test performed by a third party that included operating conditions.

It is important for the SB 54 regulations to recognize the growing nature of the plant-based products industry and foster, rather than discourage their use. By minimizing barriers and establishing clear, achievable criteria for both compostable and recyclable products, the market for plant-based solutions can expand.

Thank you for your continued consideration of these comments.

Please contact me at lauren@repurpose.com with any questions.
Sincerely,

Lauren Gropper
Founder & CEO

Response to B-27-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-28: Ross Neely (Ross Neely)

Comment B-28-1

Re: Comments on Proposed Regulations for the Plastic Pollution Prevention and Packaging Producer
Responsibility Act (SB 54) 15 Day Comment Period

To Whom It May Concern,

Kemira appreciates the opportunity to provide comments on the targeted revisions to the SB 54 implementing regulations related to food and agricultural packaging during the current 15-day public comment period, including
updates to **Section 18980.2 – Categorically Excluded Materials.** Kemira previously submitted comments on the draft regulations, emphasizing the importance of a science-based, innovation-friendly framework that advances California's circular economy goals while ensuring product safety, regulatory clarity, and practical implementation.

Kemira is a global leader in sustainable chemical solutions for packaging and water treatment. In North America, we work closely with packaging producers, industrial partners, and municipalities to deliver technologies that support circular packaging systems, enable safer water, and reduce reliance on non-sustainable solutions.

We strongly support California's leadership in advancing circular economy goals and addressing plastic pollution. SB 54 represents a significant step forward in shifting toward systems that emphasize reduction, recyclability, and compostability. Our comments below are intended to ensure that the program successfully achieves these objectives while also supporting innovation.

Response to B-28-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment B-28-2

Support for SB 54 Goals

Kemira supports the revised approach under **Section 18980.2** requiring entities seeking an exclusion for food or agricultural packaging to clearly identify specific regulatory conflicts and to demonstrate that no reasonably possible alternative packaging or packaging components exist. The three-part feasibility standard; granted only if no lawful alternative packaging exists that meets safety and structural standards, and if the regulatory conflict cannot be resolved through component replacement or by redesigning the packaging as a whole, appropriately ensures that exclusions remain narrow, justified, and aligned with the intent of SB 54. This framework promotes accountability and helps prevent overly broad carve-outs that could undermine the law's environmental objectives.

Kemira encourages CalRecycle to further clarify within **Section 18980.2** that the evaluation of "reasonably possible alternatives" explicitly includes innovative and next-generation packaging solutions. This should encompass recyclable fiber-based materials supported by advanced barrier technologies, as well as bioplastics such as polyhydroxyalkanoates (PHAs), polyhydroxybutyrate (PHB), and other emerging bio-based, compostable, and biodegradable materials such as enzymatically produced alpha-glucan polysaccharides – materials whose origins, structures, end-of-life pathways, and environmental impacts differ significantly from conventional petroleum-derived plastics. As Kemira noted in its prior comments, innovation in packaging materials continues to accelerate, and many of these solutions are designed to meet both food safety requirements and sustainability performance goals when appropriately recognized and incentivized within regulatory frameworks.

While Kemira recognizes the critical importance of compliance with mandatory food safety and related federal and state regulations, exclusions under Section 18980.2 should remain limited to specific, demonstrated conflicts rather than applied broadly across packaging categories. Broad or categorical exclusions risk discouraging the adoption of innovative recyclable, compostable, and bio-based packaging solutions that are increasingly capable of meeting safety, performance, and environmental objectives. Maintaining a rigorous, case-by-case exclusion process will help ensure that SB 54 continues to drive material innovation and packaging redesign rather than perpetuating reliance on traditional plastic materials.

Kemira also supports the Department's authority under Section 18980.2 to review exclusion notices for completeness and to identify potential alternative packaging solutions not addressed by the submitting entity.

This transparent review process will promote consistent implementation, encourage thorough evaluation of emerging materials, and reinforce alignment with SB 54's statutory intent to reduce plastic pollution and advance circular solutions.

Response to B-28-2

Comment rejected. The commenter requests section 18980.2(a)(2) be further revised to expressly identify certain types of packaging, described as "next-generation" and "emerging biobased" materials, as alternatives to be considered per se "reasonably possible." CalRecycle declines to do so because any packaging, not just the types of packaging the commenter identifies, would still need to meet the standards set forth in section 18980.2(a)(2)(B) to be

considered reasonably possible, and listing types of packaging would make that case-specific evaluation no easier. Even if the commenter did not intend to recommend that entire categories be considered per se "reasonably possible," listing certain categories of materials would still be problematic. Despite that intent, the list might still be misinterpreted as a determination that all alternatives within those categories are reasonably possible or that packaging within categories not listed cannot be considered "reasonably possible. That outcome would reduce the clarity of section 18980.2(a)(2) and not serve the commenter's stated purpose of avoiding "[b]road or categorical exclusions." Section 18980.2(a)(2) serves that purpose as written.

Comment B-28-3

Partnership with California

Kemira is committed to serving as a proactive, science-based partner in advancing California's transition to a circular economy. We stand ready to provide technical expertise on sustainable barrier technologies, fiber-based packaging solutions, and advanced chemistries; share performance data and lifecycle assessment insights on innovative materials, including bioplastics; and actively engage in stakeholder workshops, technical working groups, and advisory processes to support transparent, evidence-driven regulatory decisions that accelerate market adoption of sustainable packaging solutions.

Closing

Kemira appreciates CalRecycle's continued engagement with stakeholders and its efforts to refine the regulatory framework to support both environmental outcomes and practical implementation. We look forward to continued collaboration as the SB 54 regulations are finalized and implemented, and we remain committed to supporting policies that encourage innovation, enable sustainable packaging solutions, and deliver meaningful environmental benefits for California.

Response to B-28-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-29: Buoy, LLC (Adrian Colesberry)

Comment B-29-1

I wanted to commend your defining a reusable per the current statutes rather than putting an unnecessarily high bar and regulatory burden on plastic reusables.

Response to B-29-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-30: Perkins Coie LLP (Jeffrey Hunter)

Comment B-30-1

Dear Csilla Richmond:

Thank you for the opportunity to provide public comments on the latest draft of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) Proposed Regulations. We look forward to continued engagement with CalRecycle throughout the implementation of SB 54.

Perkins Coie LLP represents producers in various industries including retail, food, home and garden, paper products, apparel, building materials, and shipping packaging. Some of our clients will be directly impacted by the revisions to the regulations relating to federally regulated food and agricultural packaging.

We are submitting these comments on behalf of our clients and request that CalRecycle take these comments into consideration in the final rules.

Response to B-30-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment B-30-2

A. Food packaging exemptions should be consistent across states

The growing patchwork of EPR laws has created challenges for producers who must closely track and monitor various state exemptions in order to accurately report their covered materials. Some states like Oregon are proposing clear statutory exemptions for certain types of food and agricultural products that are not subject to further approval from the state. Oregon's proposed exemptions include fresh berries that are subject to federal food packaging requirements and "[n]oncompostable packaging that comes in direct contact with any amount of fresh or processed meat, poultry, fish or seafood." *See* Oregon HB 4030.

Response to B-30-2

Comment rejected. CalRecycle rejects this comment and comment B-30-3 together. The comments request that CalRecycle create "carveouts" similar to those proposed in Oregon for its EPR program. That recommendation has three major flaws. First, the commenter only points to provisions from a bill proposed in the Oregon legislature, not a currently enacted law in that state or any regulation currently under consideration there. Therefore, the commenter's proposal might

not ultimately result in the outcome sought. Second, the commenter's proposal is not based on any provision in the Act and therefore would exceed CalRecycle's authority. In particular, no provision of the Act authorizes a categorical carveout specific to packaging that contacts certain types of food. Instead, the Act allows CalRecycle to exempt packaging that CalRecycle identifies as presenting "unique challenges" or health and safety risks (Public Resources Code section 42060(a)(3) and (4)). Moreover, section 18980.2.7 provides that CalRecycle can apply those exemptions to entire classes of packaging. Taken together, these provisions mean that CalRecycle might establish the categorical exemptions sought by the commenter, but only once CalRecycle can determine that they are justified as required by the Act. Even if such determinations could be made without further assessment, codifying such determinations in regulations would be inappropriate because they could not efficiently adapt to marketplace changes, such as technological advances in packaging materials. Third, the commenter erroneously points to Public Resources Code section 42060(b)(1) in support of consideration of Oregon law. That provision concerns federal regulations, not state regulations.

Comment B-30-3

Section 18980.2(a)(2) of the EPR regulations should provide carveouts for specific types of food packaging similar to the proposed exemptions in Oregon to reduce both the burden on producers to submit notices for each exempt covered material and the administrative costs associated with processing these notices. This is consistent with the provisions under PRC § 42060(b)(1) prohibiting CalRecycle from imposing any requirement in conflict with any federal law or regulation. Having clear exemptions will allow producers to continue packaging their products consistent with federal law and in a manner that does not compromise food safety and contamination risks.

Response to B-30-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-30-2, of which this comment is a continuation.

Comment B-30-4

B. A broader exemption for food packaging protects consumers

CalRecycle should revert the exemption for federally regulated food packaging in section 18980.2(a)(2) to exempt any type of food packaging subject to federal standards regardless of whether the standard is mandatory or not. A broader exemption would allow producers to continue using existing federally approved packaging that has been specifically designed to increase the shelf life of food, protect consumers against foodborne illnesses, and reduce food waste. Our clients have experimented with alternative packaging formats for produce, which ultimately caused more food to be thrown away, as the alternative packaging did not protect and preserve the product as well as standard packaging. Customers also did not purchase as much of the produce when presented in alternative packaging formats.

In addition, certain types of meat, poultry, fish, and seafood packaging have been specifically designed to be both food safe and extend the shelf life of the product. Even if alternative packaging that complied with the federal standards was available, butcher paper, compostable trays, and/or compostable wraps are not as safe to handle and cause the items to spoil faster than if contained in federally approved plastic packaging. Accordingly, a broader exemption protects consumers and reduces food waste in the long run.

Response to B-30-4

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1. That response addresses all of the concerns and recommendations stated in this comment.

Comment B-30-5

C. CalRecycle does not have authority to decide whether federally approved packaging does not qualify for the exclusion

Although 18980.2(a)(2) only requires producers to fill out a “notice” that identifies the provisions of SB 54 that are in conflict with federal laws in order to qualify for an exclusion, CalRecycle has retained the final authority to determine whether the packaging or packaging component qualifies. As a result, CalRecycle has essentially given itself the authority to determine whether the producer is required to use alternative packaging instead of continuing to use federally required packaging. This provision raises serious preemption issues as states are not allowed to impose packaging requirements that are inconsistent with federal packaging requirements for foods such as poultry (21 U.S.C. § 467e), meat (21 U.S.C. § 678), and eggs (21 U.S.C. § 1052). As noted above, PRC § 42060(b)(1) expressly prohibits CalRecycle from imposing any requirement in conflict with any federal law or regulation.

Response to B-30-5

Comment rejected. CalRecycle rejects this comment because it effectively requests that CalRecycle relinquish the right to enforce the Act. The comment is also nonsensical because it claims that, through section 18980.2(a)(2), CalRecycle asserts the authority to require use of alternatives in lieu of "federally required packaging" and "impose packaging requirements that are inconsistent with federal packaging requirements for foods such as poultry." Section 18980.2(a)(2) does the exact opposite: It acknowledges that CalRecycle must not apply the Act in a way that prevents use of packaging necessary to satisfy federal requirements.

Comment B-30-6

D. Conclusion

Thank you for the opportunity to comment on the SB 54 Proposed Regulations, and we appreciate CalRecycle's consideration of these comments. We look forward to working with CalRecycle to address these issues.

Response to B-30-6

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-31: Kimberly Kovacs

Comment B-31-1

CalRecycle SB 54 Packaging EPR Framework
From: RENW INC. Industrial Hemp Fiber and Packaging Manufacturer
Re: Packaging EPR Framework and Covered Material Categories - SB 54
To: CalRecycle Packaging EPR Rule-making Team

CalRecycle Team,

Thank you for the opportunity to submit additional comments regarding implementation of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) and the associated Packaging Extended Producer Responsibility framework.

We are an industrial hemp fiber and packaging manufacturer producing plant-based packaging materials designed to replace higher-impact conventional packaging formats. We support California's goals to reduce packaging waste, increase recovery rates, and accelerate adoption of recyclable and compostable materials. Our comments focus on ensuring that emerging plant-fiber materials, including industrial hemp fiber packaging, are clearly and appropriately addressed within the regulatory framework.

We support California's updated SB 54 regulatory language related to administrative and process updates. We also appreciate the state's continued leadership in advancing forward-looking policy that recognizes and enables innovative materials that meet compostability and recyclability objectives.

Thank you for your consideration and valuing our previous comments, summarized below.

Respectfully submitted,
Kimberly Kovacs
CEO, RENW INC

RENW Previous Comments for SB54
Recognition of Hemp Fiber Within Plant-Fiber Packaging Categories

We respectfully request that industrial hemp fiber packaging be clearly recognized within plant-fiber or molded fiber covered material categories where material performance characteristics are comparable. Hemp fiber packaging functions similarly to other accepted plant-fiber packaging formats and should be evaluated under the same recyclability and compostability criteria.
Explicit recognition will reduce classification ambiguity and improve reporting consistency for producers and Producer Responsibility Organizations.

Performance-Based Material Evaluation
We encourage CalRecycle to maintain performance-based eligibility standards rather than material-type restrictions. Hemp fiber packaging should qualify where it meets established recyclability or compostability thresholds under recognized testing standards.
Performance-based evaluation supports SB 54's environmental objectives while allowing innovation in lower-impact packaging materials.

Distinction from Multi-Material and Laminated Formats
Plant-fiber hemp packaging should be distinguished from multi-layer plastic laminates and composite barrier materials that present recovery challenges. Hemp-based molded fiber packaging does not create the same recycling stream contamination risks and should not be grouped with problematic mixed-material flexible packaging categories. Clear differentiation will improve recovery pathway accuracy.

Standardized Testing Pathways
We recommend that CalRecycle identify acceptable third-party recyclability and compostability testing standards that alternative fiber materials can use to demonstrate compliance. Providing recognized evaluation pathways will enable consistent qualification of emerging plant-fiber packaging formats.

Avoiding Unintended Barriers to Lower-Impact Materials
Without clear classification pathways, rapidly renewable plant-fiber materials risk being unintentionally excluded despite aligning with source reduction and circular economy goals. Clarifying eligibility criteria for alternative fiber packaging supports environmental performance while maintaining regulatory clarity.

We appreciate CalRecycle's work to modernize packaging recovery systems and would welcome continued technical dialogue on plant-fiber and hemp-based packaging materials within the SB 54 framework.

Response to B-31-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-32: Markon Cooperative, Inc. (Nelia Alamo)

Comment B-32-1

Dear Director and Staff:
I am submitting these comments on behalf of Markon Cooperative, Inc., a California-based foodservice distributor and brand owner of fresh produce operating throughout the state.
Markon supports responsible environmental stewardship and recognizes the importance of regulatory frameworks that reduce plastic pollution while protecting public health. However, we are deeply concerned the revised language in Section 18980.2 (Categorically Excluded Materials)—specifically the addition of the word "mandatory" and the narrowed interpretation of what is "reasonably possible"—effectively eliminates the categorical exclusion pathway for fresh produce packaging.
For the fresh produce industry, packaging is first and foremost a food safety control mechanism. Markon relies on federal statutes, regulations, and guidance administered by the U.S. Food and Drug Administration (FDA), including requirements under the Food Safety Modernization Act (FSMA), as the governing compliance framework for food-contact materials. These federal standards establish uniform, science-based requirements to prevent contamination and protect consumers.
Fresh produce packaging is highly engineered to serve multiple safety and environmental functions simultaneously. Our packaging is designed to:
• Protect delicate commodities from bruising and damage during harvesting, cooling, and transportation
• Maintain airflow, moisture control, and structural integrity
• Extend shelf life and preserve product quality
• Reduce spoilage and contamination across the supply chain
• Minimize food waste and associated greenhouse gas emissions
In recent years, Markon has proactively tested liner-free and alternative material configurations, including advanced polymer-coated corrugated cases. In controlled supply chain trials, these alternatives resulted in measurable increases in decay, shrink, and damage. Increased food waste is not a theoretical outcome since food waste directly contributes to landfill use and greenhouse gas emissions.
As drafted, the regulation requires producers to demonstrate:
• No alternative packaging complies with FSMA, FDA food-contact standards, and California law
• Conflicts cannot be resolved through liners, coatings, or closures
• A full package redesign would still fail food safety or legal requirements

Response to B-32-1

CalRecycle rejects this comment and the rest of the commenter's submission (B-32-1 through B-32-3) for the reasons stated in response to comment B-3-1,

which raises the same concerns and offers the same recommendation as does this comment .

Comment B-32-2

This standard is not workable in practice. The proposed regulation presumes 6all potential alternatives must be exhausted regardless of technical feasibility, contamination risk, or real-world supply chain performance. In many instances, viable substitutes either do not exist or materially compromise product integrity, increase food waste, or elevate consumer cost.

Response to B-32-2

CalRecycle rejects this comment and the rest of the commenter's submission (B-32-1 through B-32-3) for the reasons stated in response to comment B-3-1, which raises the same concerns and offers the same recommendation as does this comment.

Comment B-32-3

Absent a meaningful categorical exclusion pathway, SB 54 would impose:
• Unrealistic recyclability mandates for materials that serve essential food safety functions
• Effective caps on certain single-use packaging formats without accommodation for business growth or food safety requirements
• Significant EPR fees and potential civil penalties of up to $50,000 per day, per SKU
• Additional inflationary cost pressures on California businesses and consumers already facing elevated food prices
We respectfully urge CalRecycle to preserve and clarify the categorical exclusion pathway for federally regulated fresh produce packaging. The regulatory framework should recognize that food safety, environmental sustainability, and operational practicality are not mutually exclusive. A balanced approach is necessary to avoid unintended consequences, including increased food waste and higher consumer costs.
Markon remains committed to innovation and continuous improvement in sustainable packaging. We welcome continued dialogue with CalRecycle to develop workable solutions that protect both public health and the environment.
Thank you for your consideration of these comments.
Sincerely,
Andy Hamilton
Chief Executive Officer
Markon Cooperative, Inc

Response to B-32-3

CalRecycle rejects this comment and the rest of the commenter's submission (B-32-1 through B-32-3) for the reasons stated in response to comment B-3-1, which raises the same concerns and offers the same recommendation as does this comment.

B-33: Church Brothers Farms, LLC. (Mishalin Modena)

Comment B-33-1

To CalRecycle,

The fresh produce sector is navigating a pivotal moment as it faces a growing number of packaging-related pressures that are increasingly difficult to reconcile. These challenges stem from a patchwork of evolving local, state, and federal regulations, overlapping and sometimes conflicting buyer requirements, and the limited availability of packaging alternatives that can meet the functional demands of fresh food systems. Collectively, these factors create real risks for food safety, supply chain efficiency, and environmental outcomes.

As a grower, harvester, processor, and shipper of fresh vegetables supplying customers nationwide, we are deeply concerned that the current draft fails to reasonably accommodate the food safety, shelf-life, and operational realities of fresh produce packaging.

At the center of this challenge is a sustainability paradox: the need to prevent food and material waste and reduce greenhouse gas (GHG) emissions, while simultaneously facing regulatory and public pressure to eliminate or restrict packaging based on material focused assumptions without fully accounting for life-cycle performance and environmental tradeoffs. In fresh produce systems, inadequate packaging increases spoilage, raises supply-chain costs, and drives higher overall emissions through food waste and lost production inputs—ultimately increasing the cost of healthy foods for consumers.

> **Response to B-33-1**
>
> Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment B-33-2

Conflicts with Federal Food Safety Requirements

I am submitting this comment in response to CalRecycle's January 29, 2026 draft permanent regulations for SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

These draft regulations introduce requirements that directly conflict with existing federal and state food safety and food-contact laws, including the Food Safety Modernization Act (FSMA), FDA food-contact regulations, and California food safety requirements. These conflicts are not theoretical; compliance with SB 54, as currently drafted, would require actions that undermine or violate established food safety obligations. For fresh produce operations, where packaging is integral to food protection, traceability, labeling, and shelf-life management, these conflicts create regulatory impossibilities that must be addressed. Without a practical compliance pathway, these combined pressures could

strain the fresh food system's ability to reliably produce and distribute affordable fresh food.

Packaging Is Not Optional for Food Safety
Under federal law, we are legally obligated to prevent adulteration and control microbial risk in processed foods. Packaging material, permeability rates, and structural integrity are not discretionary business 'decisions; they are components of federally mandated preventive controls.
By requiring producers to prove that no alternative material exists and to redesign packaging to comply with SB 54 material criteria, the draft regulation forces us to choose between maintaining federally required food safety controls and meeting state packaging mandates. This is not an operational inconvenience; it is a direct regulatory conflict.
Food packaging is essential to protecting public health. Since the 2006 spinach outbreak, the produce industry has made extensive investments to strengthen food safety systems and reduce cross-contamination risks throughout the supply chain. Packaging plays a critical role in protecting product integrity, maintaining traceability, and safeguarding food from harvest through processing, transportation, distribution, and retail environments.

Our operations rely on both flexible and rigid packaging solutions, including modified atmosphere packaging (MAP), to extend shelf life and safely transport fresh vegetables across the country.
Fresh produce packaging is unique among food categories because it contains a living, respiring product, requiring a symbiotic relationship between packaging performance and product physiology to maintain safety, quality, and shelf life. These technologies are essential-not optional-for maintaining quality, reducing spoilage, and ensuring food reaches consumers safely. Packaging functionality directly reduces product shrink and food waste, which is one of the largest contributors to GHG emissions. Extending shelf life is therefore not only a business necessity, but also a critical environmental objective.

Response to B-33-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same concerns this comment raises. CalRecycle also rejects this comment's core assertion, that the revisions to the proposed regulations "introduce requirements that directly conflict with existing federal and safety food safety and food-contact laws." That outcome is logically impossible, because the revisions to section 18980.2(a)(2) do not change the effect of that section, which is to exclude packaging for food and agricultural goods from the Act if there is such a conflict. The commenter even expressly acknowledges that they "are legally obligated" to achieve certain outcomes. Where those obligations exist and cannot be met while complying with the Act, section 18980.2(a)(2) clearly provides that packaging will not be subject to the Act.

Comment B-33-3

Environmental Impact and Packaging Performance

Life Cycle Assessment (LCA) studies consistently show that agricultural production accounts for a substantial portion of the environmental footprint of fresh produce. When packaging or supply chain systems fail and food is lost or wasted, the entire environmental investment in that food is also lost. Sustainability policy must therefore prioritize packaging performance and functionality alongside material reduction goals to accurately reflect total environmental impact.

Limitations of Current Packaging Alternatives

While our industry continuously works to reduce plastic use where feasible and actively pursues packaging optimization to save resources and reduce costs, there are real limitations with current alternatives. The use of 100% recycled plastic is restricted to certain applications due to food-contact regulations, processing equipment limitations, and material performance requirements.

Compostable packaging, though promising, is not a viable substitute at scale. California lacks a consistent, widely accessible industrial composting infrastructure, and manycompostable products do not break down as marketed in existing facilities, undermining circular economy objectives. Additionally, these materials do not yet provide the level of functionality required to safely ship fresh produce nationwide.

Additionally, under California AB 1201 (California Compostable Packaging Labeling Law), compostable packaging must meet specific labeling and certification requirements. At the same time, compostable materials used in packaging for organic products must comply with National Organic Program (NOP) listing requirements, which become enforceable in July 2027. At present, most compostable packaging materials do not meet these standards, effectively eliminating them as viable alternatives for fresh produce operations.

> **Response to B-33-3**
>
> Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations. To the extent the issues discussed in this comment are relevant to portions of the commenter's submission that do relate to those revisions, CalRecycle has addressed the issues as required by responding to those comments.

Comment B-33-4

The Categorical Exclusion Pathway Is Not Workable in Practice

The January 29, 2026, draft regulations significantly restrict the categorical exclusion pathway in a way that does not reasonably accommodate food safety and regulatory realities. The new "mandatory" standard and narrow interpretation of what is "reasonably possible" under Section 18980.2 create unrealistic compliance expectations that conflict with FSMA, FDA food-contact requirements, and California law. Eliminating workable categorical exclusions increases food safety risk, drives additional food waste, and places disproportionate cost and legal burdens on growers,

packers, shippers, and distributors, many of whom are treated as "producers" simply for selling into California, costs that ultimately reach consumers and families who rely on access to affordable, fresh vegetables.

Economic Impact
The financial impact of these requirements is substantial and cannot be absorbed within the fresh produce supply chain. Under existing EPR fee structures, we have already experienced packaging cost increases of approximately 10-20 percent. A complete redesign of our packaging systems to comply with the draft regulation wouldsignificantly increase unit costs and add additional transportation and distribution expenses across the supply chain. These cumulative cost pressures directly affect food affordability and consumer access.

Response to B-33-4

Comment rejected. Regarding the assertion that section 18980.2(a)(2) is not "workable in practice," CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which offers the same assertion. Regarding financial impact, the commenter's concern is misplaced because the regulation does not require "complete redesign," and, even if drastic measures were required to comply with the Act, that would not be sufficient basis for revising section 18980.2(a)(2) in the manner requested. The exclusion under 18980.2(a)(2) is based on direct conflict with federal laws, not the burdens, such as financial impact, inherent in complying with the Act. The commenter does not explain why such costs would justify a blanket exclusion for produce packaging but not all other types of packaging, and the commenter's concession that packaging could be redesigned "to comply with the draft regulation" is an admission that excluding the packaging would be inconsistent with the Act. The Act unambiguously acknowledges that regulating single-use packaging requires incursion of costs; imposition of those costs on producers is the core function of the Act, not a justification for certain packaging not to be subject to the Act. Instead, if there are special circumstances applicable to produce packaging, so that extraordinary burdens must be met to comply with the Act, an exemption with a phase-in plan pursuant to Public Resources Code section 42060(a)(3) provides a remedy, as described in section 18980.2.4.

Comment B-33-5

Challenges with the Current Categorical Exclusion Standard
The current categorical exclusion framework effectively requires a fundamental redesign of fresh produce packaging systems. For our industry, packaging is not a simple component that can be easily replaced without consequence; it is an integrated part of federally mandated food safety, structural integrity, and shelf-life controls. The level of research, testing, and documentation required to even be considered for an exclusion or exemption is not commercially or scientifically feasible for fresh produce operations. The categorical exclusion standard, as currently drafted, establishes an unworkable burden of proof. To qualify, producers must demonstrate that no alternative packaging

is available that satisfies all applicable mandatory safety and structural integrity standards, creates no new
unavoidable legal conflict, and cannot be modified, redesigned, or replaced to eliminate such conflict. In practice, this standard requires producers to evaluate every potential material and design option while still maintaining full compliance with FSMA preventive controls, FDA food-contact regulations, and California law.

Response to B-33-5

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same concerns as does this comment. As explained in greater detail in that response, section 18980.2(a)(2) does not effectively require "fundamental redesign," impose an "unworkable burden of proof," or require evaluation of "every potential material and design option."

Comment B-33-6

Why the Current Standard Is Not Achievable in Practice

For fresh produce packaging, this standard is not achievable in practice. Packaging materials, permeability rates, structural integrity, and equipment compatibility are interdependent components of federally required food safety systems. Altering one component, whether through material substitution, liner removal, or full redesign-fundamentally changes the safety and shelf-life performance of the product. The regulation assumes that conflicts can be resolved through redesign, but for living, respiring commodities, redesign often creates new food safety risks or compliance conflicts.

The level of testing, research, and documentation required to meet this burden places an unrealistic administrative, technical, and legal strain on growers, packers, and processors. The standard does not reflect commercial feasibility, scientific limitations, or the operational realities of food safety compliance.

We respectfully urge CalRecycle to revise the draft regulations to restore a practical and science-based categorical exclusion pathway for fresh produce packaging-one that fully accounts for food safety, shelf-life extension, environmental tradeoffs, and current technological limitations.
Effective sustainability policy must balance environmental goals with the critical need to safely deliver fresh, nutritious, and affordable food nationwide to avoid unintended consequences across the food system.

Thank you for the opportunity to provide comments and for considering the real-world impacts of these regulations on the fresh produce supply chain.

Sincerely,

Brian Church
CEO

Church Brothers Farms, LLC.

Response to B-33-6

CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same concerns and offers substantially the same recommendation as does this comment. CalRecycle also specifically rejects the assertion that the regulation "assumes that conflicts can be resolved through redesign." The opposite is true: Section 18980.2(a)(2) expressly acknowledges that it might not be possible to redesign packaging to resolve conflicts.

B-34: Grimmway Produce Group (Dana Brennan)

Comment B-34-1

February 12, 2026
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:

On behalf of Grimmway Produce Group (GPG), a large producer of carrots, potatoes, and organic vegetables operating in California, I am submitting comments on the January 29, 2026, final draft regulations implementing SB 54.

We understand SB 54's environmental objectives and appreciate the State's commitment to reducing waste and advancing a circular economy. At the same time, our core mission is to nourish families every day with safe, healthy, and affordable fresh produce. That mission depends on strong food safety protections, reliable supply chains, and practical regulatory frameworks.

Unfortunately, the revised language in Section 18980.2 undermines these essential objectives. Specifically, the addition of the term "mandatory" to Section 18980.2 and the narrowed definition of "reasonably possible" impose an obligation that conflicts with federal food safety requirements and real-world supply-chain conditions. These changes disregard the regulatory framework governing food packaging and place producers in an untenable position.

Fresh produce packaging is governed by comprehensive federal statutes, regulations, and FDA guidance, including the Food Safety Modernization Act and food-contact standards. These requirements are designed to prevent contamination and protect public health. Compliance with these standards is vital to public health, not discretionary, and cannot be subordinated to recyclability mandates.

Safe and effective packaging is fundamental to our ability to fulfill our mission of delivering safe, nutritious, high-quality produce to families across California and beyond. Packaging also plays a critical role in preventing food waste and reducing emissions by protecting product integrity, preserving shelf life, and enabling efficient transportation. Materials that fail to meet necessary performance and safety standards increase spoilage, emissions, and costs for consumers.

Without a workable categorical exclusion, SB 54 will impose unrealistic recyclability mandates, effectively cap the use of essential food-safety packaging, and expose producers to substantialfinancial penalties. These outcomes threaten food affordability, supply-chain stability, and environmental progress, particularly for lower-income consumers who are most sensitive to price increases.

We respectfully urge CalRecycle to revise Section 18980.2 to restore a clear, practical categorical exclusion for fresh produce packaging. The regulation should expressly recognize compliance with applicable federal food safety standards as the appropriate benchmark and allow necessary packaging where no equivalent, commercially viable alternative exists.

Absent these revisions, the regulation will increase food waste, raise emissions, and reduce access to safe, healthy, and affordable fresh produce for Californians, undermining our shared goal of nourishing families and supporting public health.

Should you have any questions about the comments contained in this letter, please contact Dana Brennan, VP of Corporate Affairs, at DBrennan@grimmwayproduce.com.

Thank you for your consideration.

Regards,
Jeff Huckaby, President & CEO
Grimmway Produce Group

Response to B-34-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same objection as this comment raises. Moreover, the commenter acknowledges that food and agricultural packaging is subject to "federal food safety requirements" and are required to comply with "standards" that the commenter also describes as "requirements." The term "mandatory" clarifies that section 18980.2(a)(2) concerns those requirements—it does not mean that a regulation, rule, or guideline must mandate specific packaging for it to be considered "mandatory" —and ensures that businesses are not required to use packaging that violates them.

B-35: Reborn Materials Inc (Jason Kang)

Comment B-35-1

February 12, 2026
Submitted to: California Department of Resources Recycling and Recovery (CalRecycle)
Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility

Act – Regulatory Revisions

Submitted by the Agricultural Packaging Execution Consortium:

- Reborn Materials Inc.
- GemPack Berries LLC
- QNA Technology S.A.
- ZYEN Biotech Inc
- GgenTec Inc

Executive Statement

We supported the SB 54 regulatory framework prior to its withdrawal and continue to support the timely adoption of regulations that sustain California's leadership in reducing plastic pollution and strengthening producer responsibility.

This comment does not request:

- Amendments to statutory recovery or source reduction targets
- Redefinitions of recycling or compostability
- Modifications to mitigation surcharge obligations
- Exemptions for agricultural packaging
- Changes to PRO authority

Instead, this comment seeks clarification within existing rulemaking authority to ensure that SB 54's enforcement mechanisms operate where verification is feasible and responsibility can be credibly attributed in agricultural systems The issue addressed here concerns execution clarity, not policy ambition.

Implementation Perspective and Regulatory Continuity

SB 54 is an evidence-based producer responsibility framework. It requires measurable recovery outcomes, producer-attributable responsibility, enforceable compliance determinations, and documentation capable of audit.

The Covered Material Category (CMC) framework provides necessary statewide structure. However, category-level recovery averages aggregate materials moving through fundamentally different operational systems.

Agricultural rigid plastic packaging, including PET clamshells, is currently evaluated within

category averages dominated by uncontrolled consumer disposal streams. These averages reflect no-control systems rather than structured operational environments. Applying category-average assumptions to materials moving through controlled agricultural systems introduces measurable implementation risk, including:

- Performance masking
- Loss of infrastructure incentive
- Implementation drift where administrative compliance proceeds without measurable recovery improvement

This is not a statutory deficiency. It is a measurement alignment issue.

Agricultural Packaging in Operational Context

There exists established, well-defined operational environments where federal compliance is already actively managed and documented, including agricultural packaging which operates under federal food safety frameworks. We believe verification boundaries under SB 54 should align with these defined operating environments, and specifically, operating environments relating to agricultural packaging.

Agricultural packaging differs from conventional consumer packaging in ways that directly
affect where and how verification can occur.
For certain commodities, including strawberries:
● Packaging is received at agricultural packaging distribution and staging facilities.
● Empty packaging is issued to field crews.
● Packing occurs in the field rather than on fixed-line packing equipment.
● Finished goods are consolidated prior to transfer to third-party logistics.
● Operational control ends at the facility exit.
These facilities represent realistic control environments where custody and aggregation are documented.
Retail handling, consumer use, and municipal disposal occur outside this operational control boundary and should not serve as enforcement anchors for producer-specific compliance determinations.
Clarifying this verification boundary strengthens regulatory defensibility by aligning compliance expectations with operational reality.

Illustrative Execution Approach in Agricultural Systems

To provide context, the consortium is deploying an execution model within agricultural packaging systems that aligns verification with operational control points.
In this model:
● Packaging is physically identified at manufacturing or packaging conversion.
● Batch-level documentation is established at production.
● Packaging receipt and issuance are documented at agricultural facilities.
● Aggregated quantities are reconciled at defined facility exit points.
● End-of-life pathways are clearly separated between qualifying recycling, validated biological processing, and residual management.
This approach does not alter statutory requirements. It demonstrates how real environmental outcomes associated with material recovery in controlled supply chains and facility-based verification can occur within SB 54's existing framework.

End-of-Life Pathway Integrity

To preserve SB 54 integrity and public trust, recycling, biological processing, and residual management must remain clearly and conservatively classified.
This comment does not advocate reclassification of disposal pathways or expansion of recycling definitions. Clear pathway separation strengthens enforceability and credibility.

Requested Clarification

We respectfully request that CalRecycle clarify, within existing regulatory authority, that:
Verified, facility-based agricultural packaging flows operating within documented control environments may be measured and attributed as distinct execution sub-systems for purposes of performance verification and reporting, without altering statutory targets, material definitions, mitigation surcharge obligations, or recovery classifications.
Such clarification enhances enforceability while preserving full producer accountability.
This clarification also reduces the risk of compliance distortion which unintentionally shifts costs onto operations that are functioning within regulatory and food safety compliance frameworks.
We acknowledge that this clarification does not fully address tracking across the entire product lifecycle, including recycling and composting; however, we believe this

clarification is a meaningful step toward such end-to-end packaging traceability systems.

Conclusion

California's leadership on plastic pollution depends not only on ambitious targets but on durable and enforceable implementation.

Clarifying verification boundaries for controlled agricultural systems:

● Improves audit defensibility
● Strengthens attribution clarity
● Supports measurable performance differentiation
● Preserves statutory integrity
● Bolsters SB 54's objective while ensuring implementation remains consistent with existing frameworks and the reality of Californian agricultural systems

We appreciate CalRecycle's continued leadership and submit this comment in support of durable, evidence-based implementation aligned with operational reality.

Respectfully submitted,
Reborn Materials Inc. (USA)
Gem-Pack Berries LLC (USA)
QNA Technology S.A. (Poland)
ZYEN Biotech (South Korea)
GgenTec Inc (South Korea)

Response to B-35-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-36: Andrew Durant (Andrew Durant)

Comment B-36-1

DRAFT

February 12, 2026

Director Zoe Heller
CalRecycle
1001 I Street
Sacramento, CA 95814

Submitted via email to: regulations@calrecycle.ca.gov

RE: ***SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations (15-day comment period)***

Dear Director Heller,

My name is Bruce Duerringer, and I write in my capacity as President of Kaneka Green Planet, a division of Kaneka America Holdings, Inc. ("Kaneka") to comment on your revised SB 54 regulations. We appreciate this opportunity to provide comments and would be pleased to respond to any questions or provide additional information.

Over the past three years, Kaneka has engaged in multiple discussions with CalRecycle and members of the State Assembly and Senate to educate them on the benefits of PHA compostable materials, and to outline our own views on the need for significant investment in the type of composting infrastructure needed to replace conventional plastics as well as to divert food waste from landfills and to thereby significantly reduce one of America's greatest sources of greenhouse gas emissions.

Prior to offering these comments, we briefly summarize PHA performance characteristics and trends:

1. PHAs are the only bioplastics that are fully biobased, home- and industrially compostable, soil- and marine biodegradable, and anaerobically digestible. PHAs meet numerous international certification standards for compostability and biodegradability, including ASTM standards for industrial compostability and European (TUV) standards for home compostability and marine and soil biodegradability.

2. PHAs are made from numerous renewable feedstocks, including sewage waste gas, methane, and waste cooking oil. In the not-too-distant future we believe that direct carbon capture from the atmosphere will become viable.

3. PHAs are approved for food contact applications by the FDA and counterpart regulators in Europe, Japan, Korea, the UK and elsewhere.

4. In 2025, the European Commission released its new Bioeconomy Study, confirming that biobased compostable plastics are a strategic pillar of the EU's future industrial base. Industry analysts view this as a significant shift in direction, and a recognition of the role that compostable materials should play in Europe's ongoing transition from conventional single use plastics.

5. A February 2022 article published by the scholarly journal Bioengineering wrote that PHA biopolymers: "...mimic the functionalities of many of the top-selling plastics of petrochemical origin, but biodegrade in soil, freshwater, and marine environments, and are both industrial- and home-compostable...**PHA materials on the market or under advanced development mimic the properties of the seven most popular plastics, which account for 230 million tons of annual plastic production** [*emphasis ours*]."

6. Research by Closed Loop Partners Composting Consortium tested over 23,000 units of compostable packaging in 10 different locations (including Napa Recycling) using different composting techniques. It reports that "on average, compostable products and packaging broke down 98 percent by surface area when composted." Compostable plastic broke down successfully regardless of composting method of compost processing time.

7. Significant new investments to increase PHA production are being made in the United States and around the world while research continues to develop new applications, such as a replacement fiber for textiles, and can therefore address another significant source of pollution as addressed under the Responsible Textile Recovery

Act, a separate California EPR law on apparel and footwear. According to PMMI and Ameripen, the market for compostable packaging is growing four times faster than demand for conventional plastic packaging and is projected to grow 16% per annum through 2032. Licensing agreements and modular design will allow production to scale up rapidly in the developing world, creating green jobs and circularity.
8. PHA's replace some of the most littered products with a biodegradable product that looks and feels like plastic.

Closer to home, Dr. Marcus Eriksen, the Co-Founder of California-based NGO 5 Gyres discussed PHAs extensively in testimony before the United States Senate Committee on Environment in October 2023. Portions of his testimony are reproduced below:
"Recycling has had 40 years to prove its effectiveness, but these systems have failed for single-use plastics. We need to accept that we're not going to recycle our way out of this problem. Fortunately, the private sector is meeting this challenge head on. Successful business models showcasing reusable and refillable packaging are proving that you can do business without causing harm or a waste management burden for taxpayers.
"However, reuse and refill systems might not work for every sector of plastic use in society. In those cases, we can turn to the promising research and innovation that continues to emerge around novel biomaterials. Biomaterials are polymers derived from natural origins, like paper, plant fibers, or a variety of bioplastics like polyhydroxybutyrate (PHB), which is produced by microorganisms. 5 Gyres recently completed an 18-month field study that measured the fragmentation of bioplastics in different terrestrial and marine settings. We took 22 items, including straws, film, and forks, and put them in real-world environments (ocean, desert, forest, wetlands) across three states. The results showed that when biomaterials end up in realistic environments, some do not last long" (see Attachment 2).
"Looking at the five types of straws in the study, some of the biomaterials were gone in 16 weeks or less. **We found that PHB , which has the functionality of some plastics, degraded as fast as paper, while the polyethylene straw was unchanged. When we look at different types of film, we find the polyhydroxyalkanoates (PHA) is gone at 16 weeks, while polyethylene remains unchanged throughout the study. Likewise, the utensils made of biomaterials largely degraded over the course of 18 months. However, the bamboo utensil did not, and the polystyrene looked as new as day one.** [*emphasis ours*]
"The innovation and entrepreneurship in this space gives me hope for the future. We're seeing new business models emerge across our country, and dozens of biomaterial companies are making tremendous headway in the packaging space. These companies are replacing fossil fuels with regenerative materials, like seaweed, waste methane, and mushrooms. This offers a new opportunity for significant job creation in industries that don't endanger people's health. The U.S. has an opportunity to lead the way here."

On January 30th, we submitted comments to DTSC responding to their November 2025 Background Document on Microplastics. In that submission, we discussed the biodegradability and compostability of PHAs and then summarized scientific research on the question of whether the biodegradation of PHAs creates persistent microplastics.

Finally, we highlighted some of the applications for our PHA materials that are being used to make products highlighted in their Background Document. We appreciate that this is a separate investigation that is independent of SB 54 and this rulemaking process, but believe it fits within the overall mandate of CalRecycle, and the multiple laws enacted by the legislature and signed into law by Governor Newsom.

Summary and Comments

SB 54 was enacted in recognition of the failure of current systems and infrastructure to meet California's earlier mandate that 75 percent solid waste be source reduced, recycled, or composted by 2020. According to the SB 54 preamble, only 5% of single use plastics are being recycled. SB 54 anticipates raising $550 million over the next 10 years through a variable fee structure that will incentivize companies to migrate towards using fewer and better materials. We believe that CalRecycle should maintain a focus on these long-term objectives and the positive role that compostables can plan in this transition.

1. We appreciate that the Covered Material Category list published in December 2025 has been expanded to cover more compostable products as it illustrates a pathway for composters to be compensated for investments that they make to process compostable packaging and single-use plastics.

2. Many composters in California and across the US already accept compostable packaging. While it should be left to the individual compost operator to determine whether they want to accept compostable bioplastics, those who opt not to accept compostable bioplastics should not receive funding from the EPR fees unless their refusal is based on existing facility limitations that can be remedied within a specific and reasonable time frame through investments in the facility that can be funded through the EPR fees.

3. Any claims based on compostable product performance (incomplete disintegration) should be thoroughly and independently documented. To ensure that conditions are optimal, we recommend CalRecycle use the newly published ASTM standard to ensure that compost facilities provide optimal conditions for compostable materials.

4. We strongly believe all materials sent to compost should be subject to the same ASTM standards. California law stipulates this. However, the draft regulations continue to provide preferential treatment for paper and fiber products which may not completely degrade in finished compost piles. t

We very much appreciate this opportunity to provide additional comments and are available to answer any questions that you may have.

Best regards,

Bruce Duerringer

Bruce Duerringer
President
Green Planet Division
Kaneka America Holdings, Inc.

281.291.3131
Bruce.duerringer@kaneka.com

1 Koller M, Mukherjee A. A New Wave of Industrialization of PHA Biopolyesters. Bioengineering (Basel). 2022 Feb 15;9(2):74. doi: 10.3390/bioengineering9020074. PMID: 35200427; PMCID: PMC8869736.
2 Written Testimony (senate.gov)
3 PHB is in the family of PHAs

Response to B-36-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-37: Charter Next Generation

Comment B-37-1

Charter Next Generation is submitting comments as a manufacturer of specialty packaging films for food applications in California. We are supportive of allowing exclusions in cases where packaging solutions cannot be reasonably developed to meet both SB54 and FDA/USDA requirements. It is important that when these exemptions are approved, they include exempting the packaging material from all components of the SB54 program, including source reduction requirements.
However, we are concerned about the use of the word "mandatory regulations, rules or guidelines" in Section 18980.2. Categorically Excluded Materials. This significantly narrows the opportunity to obtain exclusions where they would be greatly needed to not only deliver food safety to the retail shelf but also provide other operational and environmental benefits. For example, food packaging solutions serve many other critical functions, including optimizing the supply chain to reduce food waste and greenhouse gas emissions, topics for which the USDA and FDA do not have authority. Thus, the regulations, as written, which aim to reduce waste, may lead to increased food waste and environmental impacts, as well as increased operational and consumer food costs.
Overall, we feel the exclusion process can be made much more administratively efficient through a categorical exclusion for key food and agricultural products (e.g. all meat, cheese, produce) vs. the exclusion design as currently written.

Response to B-37-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1.

B-38: Youngstown Grape Distributors Inc. (MICHAEL FORREST)

Comment B-38-1

To: Csilla Richmond
Department of Resources Recycling and Recovery

Dear Ms. Richmond:

We submit this comment in response to the 15-day proposed changes to the permanent regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

We are a California-based grower, packer, and shipper of fresh fruit, including fresh-cut pomegranate arils and bagged stone fruit. Our products are perishable, high-moisture food items that require sealed plastic packaging for food safety, shelf life preservation, and leak prevention.

We respectfully object to the unreasonable scope of the regulations as currently structured, particularly as applied to fresh, moisture-dependent produce packaging.

1. Food Safety and Federal Compliance Conflict

Fresh-cut arils and similar products require moisture-barrier, sealed, food-grade packaging to comply with FDA Food Safety Modernization Act (FSMA) preventive controls. Fiber-based alternatives are not technically viable for wet produce and would materially increase microbial and spoilage risks.

The regulations must explicitly clarify that compliance obligations shall not require packaging substitutions that compromise food safety or violate federal standards.

Response to B-38-1

Comment rejected. Section 18980.2(a)(2) expressly excludes packaging that cannot be replaced by alternatives that comply with federal requirements, such as those cited by the commenter. No clarification is required with respect to packaging that presents such a conflict. To the extent the commenter asserts that 18980.2(a)(2) should apply when there are food safety concerns that alternatives could not address for reasons other than a conflict with federal requirements, CalRecycle declines to make such a change. As described in detail in response to comment B-3-1, section 18980.2(a)(2) concerns direct legal conflicts only, and the Act addresses scenarios like those the commenter

describes by allowing exemptions for "unique challenges" and health and safety risks under section 18980.2.4. Those exemptions are sufficient to address, for example, the necessity of using certain packaging for particular food products when other packaging would be not reasonably safe or otherwise impractical.

Comment B-38-2

2. Lack of Moisture-Dependent Produce Exemption
The rule does not adequately distinguish between discretionary single-use packaging and essential, food-safety-driven packaging for wet produce. Fresh-cut fruit and high-moisture refrigerated products should be subject to tailored standards recognizing their structural packaging requirements.

Response to B-38-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-38-1. Those reasons apply equally to this comment, which merely raises an example of a scenario where an exemption due to unique challenges or health and safety risks may be appropriate if there is no legal conflict concerning federal requirements.

Comment B-38-3

3. Source Reduction Mandate Is Misaligned with Fresh Produce
The 25 percent source reduction requirement fails to account for lifecycle impacts. Plastic produce packaging reduces food waste, shrink, and handling damage. Increased spoilage will increase greenhouse gas emissions through methane from decomposing food, undermining the law's climate objectives.
4. Infrastructure Realities
Many flexible films used for produce packaging are unlikely to meet recyclability thresholds under current statewide infrastructure. Imposing compliance without functional recycling pathways creates liability without a practical compliance route.
5. Disproportionate Economic Impact on California Agriculture
California growers and packers operate under thin margins and face extensive existing regulatory burdens. Sweeping agricultural producers into a CPG-oriented EPR framework risks unintended competitive harm to in-state agriculture.
Requested Revisions
We respectfully request:
• A clear exemption or tailored compliance pathway for moisture-dependent fresh produce packaging
• Explicit protection against food-safety conflicts
• Recognition of lifecycle food-waste tradeoffs in source-reduction requirements
• Phased implementation tied to demonstrated recycling infrastructure readiness
We support responsible environmental stewardship. However, the regulations must reflect the operational realities of fresh food production and distribution.
Respectfully submitted,
Michael Forrest
President

Youngstown Grape Distributors Inc.

Response to B-38-3

Comment rejected. No response is necessary to the numbered items in this comment because they do not concern the revisions made to the proposed regulations. Regarding the unnumbered items labeled as "Requested Revisions," to the extent the first two items relate to section 18980.2(a)(2), CalRecycle has addressed them in response to comments B-38-1 and B-38-2. No response is otherwise necessary regarding the unnumbered items because they do not concern the revisions made to the proposed regulations.

B-39: NatureSweet (Skip Hulett)

Comment B-39-1

Subject: Comments on SB 54 Final Draft Regulations – 15-Day Comment Period (Jan. 29, 2026 Notice)

To CalRecycle, Regulations Unit:
I am submitting comments in response to CalRecycle's January 29, 2026, Notice of 15-Day Changes to the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. I submit these comments on behalf of NatureSweet, a U.S.-based, Texas-headquartered fresh produce company.

1) Comment scope for the 15-day changes

We understand CalRecycle will consider comments limited to the changes identified in the 15-day notice, including revisions to section 18980.2(a)(2) and related provisions addressing categorically excluded materials. Our comments focus on those revisions—particularly the tightened standard for categorical exclusion and the apparent narrowing of what is "reasonably possible" for fresh produce packaging.

2) Section 18980.2 categorical exclusion changes are unworkable for fresh produce packaging

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. By tightening the exclusion test—including an apparent emphasis on "mandatory" requirements and a restrictive interpretation of what is "reasonably possible"—the revision risks making the categorical exclusion pathway effectively unattainable for many fresh produce packaging formats, even when those formats serve critical product integrity and perishability functions.

Fresh produce packaging decisions are governed by non-negotiable operational realities: maintaining sanitary handling, minimizing damage, preserving quality, and ensuring shelf life across harvesting, cooling, distribution, and retail. These are not discretionary features; they are fundamental to delivering safe, high-quality, affordable produce to Californians.

Response to B-39-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same concern as does this comment with regard to the term "mandatory" and the attainability of an exclusion under section 18980.2(a)(2).

Comment B-39-2

3) NatureSweet's recommended policy direction: a Fresh Food Waste Credit, with food safety as a guardrail

We respectfully recommend that CalRecycle restructure the approach reflected in the proposed revisions in two ways:

A. Do not force the exclusion question into an all-or-nothing "food safety exemption" test.

Food safety is an essential technical and compliance constraint for fresh produce packaging—but centering the exclusion pathway primarily on a narrow "mandatory" food safety conflict sets up an impractical evidentiary burden.

Importantly, any SB 54 "safety" or "compliance" showing must be fully consistent with the FSMA and FDA's existing compliance framework and should not create additional state-level barriers or duplicative requirements that effectively move the goalposts for food-contact packaging. The appropriate benchmark for safety-related packaging compliance is the established federal system (including FDA food-contact requirements and FSMA-aligned preventive controls), and SB 54 implementation should avoid layering additional, non-uniform burdens that could disrupt interstate perishable supply chains.

B. Align SB 54 implementation with SB 54's environmental objectives through a performance-based Fresh Food Waste Credit.

For perishable foods, reducing food waste and shrink are often the biggest levers for reducing environmental harm, because the upstream footprint (water, land, energy, fertilizer, refrigeration, transportation) is embedded in the food itself. When produce is wasted, those impacts are wasted as well, and disposal can increase methane emissions. In many cases, the environmental gains from preventing spoilage and shrink will materially exceed the gains from marginal packaging "tweaks" that risk shortening shelf life or increasing damage. A policy pathway that credits packaging's role in preventing spoilage is therefore more directly aligned with SB 54's environmental goals than a framework that unintentionally incentivizes changes that increase waste.

Produce packaging frequently delivers net environmental benefits by preventing spoilage and reducing food waste. Regulatory design should account for those lifecycle realities rather than focusing narrowly on packaging attributes alone.

Response to B-39-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1. That response addresses the commenter's objection with respect to conflicts with federal requirements and the alleged imposition of an "evidentiary burden." Moreover, the commenter's own description of federal law demonstrates that section 18980.2(a)(2) is appropriate

as written. The commenter acknowledges that federal law creates a "compliance framework" and imposes "requirements." Section 18980.2(a)(2) ensures that packaging will not be required to comply with the Act if doing so would conflict with complying with the federal framework and associated requirements. CalRecycle also rejects this comment's suggestion of a "fresh food waste credit." That suggestion is vague; CalRecycle cannot discern what change would constitute such a "policy pathway" or identify a provision of the Act that would authorize CalRecycle to create a "performance-based" credit directed specifically at food waste. To the extent the commenter intended to refer to a credit for purposes of fees paid to the Producer Responsibility Organization fees pursuant to Public Resources Code section 42053, CalRecycle rejects this comment for the reasons provided in response to comment B-39-4.

Comment B-39-3

4) Specific requested changes for the 15-day revisions

We respectfully urge CalRecycle to revise the 15-day changes to restore a workable pathway for fresh produce by:

1. Clarifying "reasonably possible" to include perishability and food waste outcomes

Define "reasonably possible" in a manner that recognizes produce packaging's functions (damage reduction, shelf-life extension, moisture/airflow control, and quality preservation) and avoids creating incentives that increase spoilage, shrink, or contamination risk.

Response to B-39-3

Comment rejected. While the commenter labels this portion of their submission as setting forth "[s]pecific requested changes," this comment does not offer a specific suggestion. Instead, it restates the objection raised earlier in the submission regarding the "reasonably possible" standard, which the commenter alleges has been narrowed. CalRecycle therefore rejects this comment for the reasons stated in response to comment B-39-1. Moreover, as explained in greater detail in response to comment B-3-1, the exemptions described in section 18980.2.4 for unique challenges and health and safety risks are adequate to accommodate compliance obstacles and practical limitations related to packaging functions and effectiveness.

Comment B-39-4

2. Creating an explicit performance-based Fresh Food Waste Credit (or preferred fee treatment)

Add regulatory language or implementing criteria that allow packaging formats to qualify for lower fees / eco-modulation through a Fresh Food Waste Credit when supported by evidence such as retail shrink reduction, shelf-life testing, and damage-rate reductions.

Response to B-39-4

Comment rejected. Public Resources Code section 42053(d) sets forth the factors on which the PRO's fee schedule must be based, and section 42053(e) lists the factors based on which the PRO must adjust fees for producers (referred to as "malus fees" and "credits"). Generally, the factors relate to the funding necessary for the PRO and producers to meet their statutory obligations. The Act does not authorize CalRecycle to dictate the fee schedule, mandate specific malus fees and credits, or modify the factors the PRO must consider; instead, the PRO is authorized to propose a fee schedule, and CalRecycle must approve it if it satisfies all statutory requirements.

Comment B-39-5

3. Treating food safety as a guardrail aligned with FSMA and FDA requirements—without added compliance barriers

Maintain protections so SB 54 requirements do not penalize packaging changes that materially increase contamination risk, undermine sanitary handling, or degrade traceability expectations. At the same time, ensure that any safety-related documentation or thresholds align with FSMA and FDA's existing compliance framework and do not impose new, duplicative barriers that are impractical for perishable foods and multi-state supply chains.

Response to B-39-5

Comment rejected. While the commenter labels this portion of their submission as setting forth "[s]pecific requested changes," this comment does not offer a specific suggestion. Instead, this comment repeats the objection raised in comment B-39-2 concerning alignment with existing frameworks and allegedly duplicative and impractical requirements. CalRecycle cannot respond to the commenter's reference to "traceability expectations" because the commenter does not adequately explain it. CalRecycle cannot discern how "SB 54 requirements" might "penalize packaging changes that materially . . . degrade traceability expectations" or why the commenter asserts that those requirements should not do so.

Comment B-39-6

5) Food security and undue burden: avoid compounding current pressures on American farmers and growers

SB 54 implementation should explicitly account for the current economic reality facing American farmers and growers. Fresh produce operates on small margins, with limited ability to absorb additional costs or administrative burdens. Today, many growers are navigating rising input and labor costs, evolving compliance requirements, market variability, and more limited access to capital. In this context, introducing additional EPR fees and potential penalties—without a practical, produce-specific pathway—could create additional operational challenges for farms and grower-packers.

This food security concern is heightened by the government's increasing focus on improving health outcomes through access to affordable, whole foods, with fresh fruits

and vegetables playing a vital role. Policies that unintentionally raise costs or reduce the availability of fresh produce run counter to those objectives.
If the categorical exclusion pathway is effectively closed and no performance-based Fresh Food Waste Credit exists, SB 54 risks:
• increasing costs across the produce supply chain,
• delaying investment and innovation in sustainable production,
• reducing availability and increasing prices of affordable whole foods,
• and shifting sourcing and market share away from domestic growers—undermining food security and resilience.
A performance-based Fresh Food Waste Credit that recognizes measurable reductions in food waste and shrink is a pragmatic way to avoid undue burden while advancing SB 54's environmental goals. It helps ensure California's approach supports both climate outcomes and continued access to affordable fresh fruits and vegetables.

Conclusion

NatureSweet supports the objectives of SB 54. However, the 15-day revisions to the categorical exclusion provisions risk creating an unworkable standard for fresh produce packaging and may unintentionally increase food waste—undermining environmental goals while placing undue burden on growers and perishable supply chains.
We respectfully request CalRecycle revise the 15-day changes to: (1) restore a workable interpretation of "reasonably possible" for perishable foods; (2) establish a performance-based Fresh Food Waste Credit (or preferred fee treatment); and (3) treat food safety as a guardrail aligned with FSMA and FDA's compliance framework, without imposing additional barriers or duplicative requirements.
Thank you for considering these comments.
Sincerely,
Skip Hulett
Chief Legal Officer
NatureSweet
shulett@naturesweet.com

Response to B-39-6

Comment rejected. While the commenter labels this portion of their submission as setting forth "[s]pecific requested changes," this comment does not state additional objections to section 18980.2(a)(2) or recommended changes to it. While the comment adds food policy considerations and factual context concerning the alleged consequences of maintaining section 18980.2(a)(2) as written, those additions do not fix the flaws with the commenter's suggested approach, discussed in responses to comments B-39-2 through B-39-4. CalRecycle also rejects this comment for the reasons stated in response to comment B-3-1, which raises objections substantially similar to those raised in this comment.

B-40: Beta Analytic (Benjamin Kling)

Comment B-40-1

California Department of Resources Recycling and Recovery (CalRecycle)
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act | Stakeholder Input

This comment is specifically intended to recommend that the proposed SB 54 implement a definition of the term "biobased" which directly requires the carbon-14 testing method following ASTM D6866 Method B to determine the share of biobased carbon embodied in materials seeking recognition under the program. Biobased content measurements following standards such as ASTM D6866 Method B currently provide critical value to similar existing programs and can play a key role in achieving SB 54's objectives.

Included here you will find:
Recommendations for SB 54 1
What is Biogenic Testing (Carbon-14)? 5
ASTM D6866 Method B - The Most Reliable Method 6
About Beta Analytic 7
ISO/IEC 17025:2017 laboratory 7
Required tracer-free facility for Carbon-14 8
References 8

Recommendations for SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act

Our recommendation for SB 54 is to incorporate a definition of the term "biobased," which is consistent with the definition used by ASTM D6866 and requires direct biobased content testing following ASTM D6866 Method B for any biobased materials seeking recognition under the law. This would create consistency with similar initiatives throughout the federal government, particularly the USDA's BioPreferred® Program, and would help CalRecycle achieve SB 54's goals of reducing petrochemical pollution from plastics and packaging.

Since SB 54 includes "aliphatic biopolyesters" in its definition of the term plastic (42040 (t)), it chooses not to regulate biobased materials and bioplastics separately from traditional plastics. By doing so, CalRecycle fails to make the decarbonization benefits of biobased plastics available to California's transition away from petrochemicals. This decision benefits traditional petrochemical plastic producers by failing to make more sustainable alternatives available to consumers, and even further by communicating to California consumers that CalRecycle considers fossil and biobased materials to be equally sustainable. This directly compromises SB 54's ability to achieve its intended outcomes.

Beta recommends that SB 54 should include a specific definition of the term “biobased,” following the ASTM D6866 definition.1 Including the ASTM D6866 definition would guarantee that only products
containing renewable content benefit from the biobased label because it relies on direct testing to verify claims. Products which can prove they embody biobased content should be recognized as a pathway to achieving SB 54’s goals for displacing petrochemicals. Even further, the use of direct testing in this definition would allow CalRecycle to exclusively incentivize the biobased portion of these products. This would also create consistency with the USDA BioPreferred® Program’s 20-year accepted definition of biobased that is sustained by direct product testing under ASTM D6866.2

The USDA recently issued a major update to the BioPreferred Program, combining the federal procurement and voluntary labeling portions of the program into one unified pathway, which relies on direct testing following ASTM D6866 to demonstrate biobased content.3 This is an important rule toconsider because USDA upheld the importance of the ASTM D6866 definition of biobased, specificallresponding to commenters who advocated for the introduction of calculation-based approaches such as mass balance. USDA’s response to those comments said, “The Agency notes that products produced by mass balance methods are not Biobased Products as defined by this final rule. To maintain the integrity of the Label and to prevent diluting public understanding of what the Label means, the Agency must maintain a consistent definition of what it means for a product to be biobased.”4 It is critical to follow this approach of a consistent definition to make the term biobased meaningful to consumers and guarantee that biobased products are truly providing the decarbonization benefits the term is intended
to promote.

The BioPreferred definition of “biobased” should specifically be used to inform Section 18980.6.7(j) on developing a credit for producers who use plastic-covered material derived from renewable materials (included below). Since the goal would be to give this credit only to the renewable portion of products and not materials of mineral or fossil origin, ASTM D6866 testing should be required to demonstrate the renewable content.

(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, a PRO shall provide a credit for producers who use plastic-covered material derived from renewable materials.
(1) “Renewable materials,” for the purposes of paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are wholly derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat

Direct biobased testing requirements are the established best practice for determining renewable content under leading public and private incentive programs for biobased products. For reference, ASTM D6866 is required for reporting the biobased content of

renewable chemicals, bioplastics and other biobased products under the following prominent programs (please see specific rules hyperlinked):
- The USDA BioPreferred Program requires ASTM D6866 Method B testing for any biobased products, including renewable chemicals, seeking recognition of renewable content.5
- The EU's Policy Framework for Biobased, Biodegradable and Compostable Plastics recommends direct Carbon-14 testing as its preferred method for determining biobased products.6
- Four US states have Renewable Chemicals Act laws which provide incentives for biobased chemical production requiring ASTM D6866 testing: Iowa, Kentucky, Minnesota and Maine. The 2024 bill for a federal Renewable Chemicals Act also proposed to require ASTM D6866 testing, as have several previous versions of the bill.
- The leading biobased product certification programs in the market require Carbon-14 testing to verify biobased content, including TUV Ok Biobased, DIN CERTCO Biobased, UL 9798 biobased content validation, SGS Green Mark, Nordic Swan Ecolabel, Germany's Blue Angel Ecolabel, Braskem I'm Green™, Leadership in Energy and Environmental Design (LEED) and CertiPUR-US®
- ASTM D6866 was also the proposed methodology for identifying biobased practices in the 2024 Biomanufacturing and Jobs Act.

In addition to the USDA BioPreferred® Program, we encourage CalRecycle to review the EPA's proposed Label Program for Low Embodied Carbon Construction Materials.7 This proposed program further demonstrates the importance of recognizing and incentivizing biobased content as an approach to displacing petrochemicals. By failing to recognise biobased materials as a distinct category and incentivizing their use, the proposed draft text of SB 54 would continue to promote the use of petrochemical plastics in these long-term embodied materials. This is particularly relevant to consider because while many of the materials the proposed EPA label would address are difficult to decarbonize and may not be feasible for compostability yet, SB 54 can incentivize the transition away from petrochemicals in these products by including a definition of the term "biobased".

If SB 54 incorporates a definition of the term biobased, it is critical that materials receiving this designation be required to submit routine direct testing, rather than allow calculation-based approaches such as mass balance. These calculations allow producers to assume that all of their biomass inputs end up in their facilities' outputs, despite it being well understood in the industry that the input of renewable feedstocks is not the same as the output. Renewable feedstocks will often have different activity than their fossil counterparts and won't necessarily produce the same quantity of outputs.8 By basing their calculations solely on production inputs rather than outputs, these methods systematically over-report the renewable share of fuels.

Even further, mass balance calculations allow producers to freely attribute the renewable content of feedstocks among end products, making these operations extremely difficult to audit and creating an environment ripe for greenwashing and fraud.9 The risk of allowing the mass balance approach can be seen in the case of

fraudulent ISCC mass balance certified biofuels, which plummeted the value of European biofuels in June of 2023.10 Beta Analytic urges CalRecycle to ensure that SB 54 reflects the integrity of the term “biobased” by including direct product testing under ASTM D6866 in its definition.

In August 2024, the US Environmental Protection Agency (EPA) launched a federal action against the mass-balance methodology used in the recycling sector. The Agency notably highlighted concerns about this methodology being used to assess the recycled content of plastics, as it routinely overestimates the actual recycled content of bioplastics, which misleads consumers and does not contribute to the circular economy and decarbonisation goals. This methodology can be used to artificially inflate the recycled content of products to take advantage of incentives and to sell their products at a higher price for the recycled content incorporated into their process. A ProPublic investigation published in June 2024 found that products advertised as 30% recycled through mass balance often contained less than 1% recycled content. Similar concerns were shown by the US EPA as early as 2023, which described the mass-balance methodology as deceptive and advised against promoting it.11 Following the publication of the federal case, the US EPA updated the methodology for its Safer Choice label, requiring the recycled content to be determined by weight post-consumer, effectively prohibiting the mass-balance methodology from being used to certify products under the Safer Choice program.

This led California Attorney General Rob Bonta to file a lawsuit against ExxonMobil in September 2024, claiming that the oil major “deceptively” promoted chemical recycling as a solution to the plastic crisis, citing their use of mass balance calculations such as ISCC Plus.12 That lawsuit directly challenges the standard’s use of ISCC’s free allocation method as a system designed to enable greenwashing.13 This is the same issue facing the biobased products industry from ISCC certifications and associated terminology like “bio-attributable” and “biomass balanced,” which are being promoted in other comments for this update to SB 54. The New York Times also recently published a relevant article on the challenges that mass balance presents to the recycling industry, which aligns with the challenges experienced in the renewable products industry.14

Based on these challenges, ISCC and other calculation-based certifications should not be eligible to apply for designation as third-party certifications under SB 54. The role of major oil and petrochemical companies on the organisation’s board of directors15 should be considered a direct conflict with Section 18981 (b)(2), which requires that approved third-party certifications, “[m]ust be independent, impartial, and not have any conflict of interest with respect to granting the certification.” This conflict led the New York Times article discussed above to refer to ISCC as a “self-certification system,” designed by these influential corporations in the industry.16 Especially given that the state is suing ExxonMobil, citing the ISCC Plus certification as a deceptive practice, this scheme should not be approved for any purpose, whether for recycled or biobased content.

The issue of free attribution has led industry proponents of mass balance to propose the use of broad terms such as “bio-attributable,” and “mass balance biobased,” which are specifically intended to allow commercial interests to avoid compliance with the ASTM D6866 definition.17 By failing to include a definition of biobased, which is tied to direct testing, this draft of SB 54 creates consumer confusion to the benefit of these competing definitions designed to enable greenwashing of fossil-based products. Including the ASTM D6866 definition would clearly communicate to consumers that only the portion of products directly derived from biomass should be considered renewable.

One other important policy to consider for SB 54 in this connection is the EU’s Policy Framework for Biobased, Biodegradable and Compostable Plastics. The framework states that, “It is also important to ensure that biobased content is measured precisely. **Radiocarbon-based methods should be preferred** as their results are robust and their use is widely accepted. Documenting the use of biomass through a chain of custody and attributing a share to end-products through mass balance accounting is a method which is not considered suitable for confirming the actual share of biobased content.”18 Even further, under its Packaging and Packaging Waste Directive (PPWD), the European Commission is required to complete a review of the state of bio-based plastic packaging, and to propose legislation by 2028 to create a biobased label, in which radiocarbon verification should be the preferred method to measure their renewable content.19 SB 54 should use this same approach when incorporating biobased content to ensure products seeking the designation provide real decarbonization benefits and avoid greenwashing from calculations like mass balance.

In summary, Beta urges CalRecycle to include a definition of the term biobased in SB 54, which is tied to routine biobased content testing. Direct test results following ASTM D6866 Method B will be the most effective tool for the program to validate and track the decarbonization of plastics and packaging achieved by the use of biobased content under this policy.

What is Biogenic Testing (Carbon-14)?

Carbon-14 analysis is a reliable method used to distinguish the percentage of biobased carbon content in a given material. The radioactive isotope carbon-14 is present in all living organisms and recently expired material, whereas any fossil-based material that is more than 50,000 years old does not contain any carbon-14 content. Since Carbon-14 is radioactive, the amount of carbon-14 present in a given sample begins to gradually decay after the death of an organism until there is no carbon-14 left. Therefore, a radiocarbon dating laboratory can use carbon-14 analysis to quantify the carbon-14 content present in a sample, determining whether the sample is biomass-based, fossil fuel-derived, or a combination.

The analysis is based on standards such as ASTM D6866 and its international equivalents developed for specific end uses, such as the European standard ISO 16620. ASTM D6866 is an international standard developed for measuring the biobased

carbon content of solid, liquid, and gaseous samples using radiocarbon dating.20 There are also many specific international standards based on the use of direct carbon-14 testing, such as ISO 16620 which is an international standard that measures the biobased carbon content of plastic products, polymers, and additives.21

Carbon-14 analysis yields a result reported as % biobased carbon content. If the result is 100% biobased carbon, this indicates that the sample tested is completely sourced from biomass material such as plant or animal byproducts. A result of 0% biobased carbon means a sample is only fossil fuel-derived. A sample that is a mix of both biomass sources and fossil fuel sources will yield a result that ranges between 0% and 100% biobased carbon content. Carbon-14 testing has been incorporated into several regulations as the recommended or required method to quantify the biobased content of a given material.

ASTM D6866 Method B - The Most Reliable Method

Carbon-14 is a very well-established method which has been in use by many industries (including the fossil fuel industry) and academic researchers for several decades. Carbon-14 measurements done by commercial third party testing is robust, consistent, and with quantifiable accuracy/precision of the carbon-14 amount under **ASTM D6866 method B.** The EN 16785 is the only standard that allows a variant of the Mass Balance (MB) method of 'carbon counting' under EN 16785-2. The EN 16785-1 requires that the biocarbon fraction be determined by the carbon-14 method. However, when incorporating this EN 16785 method, certification schemes like the "Single European Bio-based Content Certification" **only** allow the use of EN 16785-1 due to its reliability and the value of a third-party certification. http://www.biobasedcontent.eu/en/about-us/

In ASTM D6866 method B, the carbon-14 result is provided as a single numerical result of carbon-14 activity, with graphical representation that is easily understood by regulators, policy makers, corporate officers, and more importantly, the public. The overwhelming advantage of carbon-14 is that it is an independent and standardized laboratory measurement of any carbon containing substance that produces highly accurate and precise values. In that regard, it can stand alone as a quantitative indicator of the presence of biobased vs. petroleum feedstocks. When carbon-14 test results are challenged, samples can be rapidly remeasured to verify the original reported values (unlike mass balance).

The quantification of the biobased content of a given product can be as low as 0.1% to 0.5% (1 relative standard deviation – RSD) based on Instrumental error for Method B (AMS). This error is exclusive of indeterminate sources of error in the origin of the biobased content, and manufacturing processes. As such a total error of +/-3% (absolute) has been assigned to the reported Biobased Content to account for determinate and indeterminate factors.22

It is also important that the program should always require ASTM D6866 Method B, rather than allow Method C for any use. Where ASTM D6866 Method B uses the AMS

Instrument to measure 14C, Method C uses Liquid Scintillation Counting (LSC). In Method B, the AMS Instrument directly measures the 14C isotopes. However, in Method C, scintillation molecules indirectly absorb the beta molecules that release with the decay of 14C and convert the energy into photons which are measured proportionally to the amount of 14C in the sample. Since Method B directly measures the 14C isotopes and Method C measures them indirectly, Method B is significantly more precise and should be prioritized in regulations.23 LSC measurements, like those used in Method C, are commonly used as an internal testing tool when samples are limited and accuracy does not need to be extremely high.

About Beta Analytic

Beta Analytic was among the originators of the use of Accelerator Mass Spectrometry (AMS) for the ASTM D6866 biobased / biogenic testing standard using Carbon-14 to distinguish renewable carbon sources from petroleum sources. Beta began testing renewable content in 2003 at the request of United States Department of Agriculture (USDA) representatives who were interested in Beta's Carbon-14 capabilities for their BioPreferred® Program (www.biopreferred.gov). At their request, Beta joined ASTM under subcommittee D20.96. Beta's previous president, Darden Hood, was positioned as a technical contact for the USDA and within 3 months completed the ASTM D6866-04 standard. The Carbon-14 technique is now standardized in a host of international standards including ASTM D6866, CEN 16137, EN 16640, ISO 16620, ISO 19984, BS EN ISO 21644:2021, ISO 13833 and EN 16785. Carbon-14 analysis can be used on various types of samples (gas, liquids and solids). Beta Analytic continues to be a technical contact for ASTM D6866 with current president Ron Hatfield and is involved with all their latest ASTM D6866 versions.

The Carbon-14 standardized method is also incorporated in a variety of regulatory programs including the California AB32 program, US EPA GHG Protocol, US EPA Renewable Fuels Standard, United Nations Carbon Development Mechanism, Western Climate Initiative, Climate Registry's Greenhouse Gas Reporting Protocol and EU Emissions Trading Scheme.

We are currently technical experts on Carbon-14 in the following committees:

ASTM D6866 (D20.96) Plastics and Biobased Products (Technical Advisor)
ASTM (D02.04) Petroleum Products, Liquid Fuels and Lubricants (Technical Advisor)
ASTM (061) US TAG to ISO/TC 61 Plastics (Technical Expert)
USDA BioPreferred® Program TAC (Technical Advisor)
ISO/TC 61/SC14/WG1 Terminology, classifications, and general guidance (Technical Expert)
CEN/TC 411 Biobased Products
CEN/TC 411/WG 3 Biobased content
CEN/TC 61/SC 14/WG 1 Terminology, classifications, and general guidance (Technical Expert)

ISO/IEC 17025:2017 Accredited Laboratory

To ensure the highest level of quality, laboratories performing ASTM D6866 testing should be ISO/IEC 17025:2017 accredited or higher. This accreditation is unbiased, third party awarded and supervised. It is unique to laboratories that not only have a quality management program conformant to the ISO 9001:2008 standard, but more importantly, have demonstrated to an outside third-party laboratory accreditation body that Beta Analytic has the technical competency necessary to consistently deliver technically valid test results. The ISO 17025 accreditation is specifically for natural level radiocarbon activity measurements including biobased analysis of consumer products and fuels, and for radiocarbon dating.

Required tracer-free facility for Carbon-14

For carbon-14 measurement to work, be accurate, and repeatable, the facility needs to be a tracer-free facility, which means artificial/labeled carbon-14 is not and has never been handled in that lab. Facilities that handle artificial carbon-14 use enormous levels relative to natural levels and it becomes ubiquitous in the facility and cross contamination within the facility, equipment and chemistry lines is unavoidable. Results from a facility that handles artificial carbon-14 would show elevated renewable contents (higher pMC, % Biobased / Biogenic values), making those results invalid. Because of this, Federal contracts and agency programs (such as the USDA BioPreferred® Program) require that AMS laboratories must be 14C tracer-free facilities in order to be considered for participation in solicitations.

Areas where cross-contamination might occur include but are not limited to; biomedical or nuclear reactors, isotope enrichment / depletion columns, water, soil, plant, or air samples collected near or at biomedical / nuclear reactor sites, medical, industrial, or hazardous waste sites, samples specifically manipulated to study the uptake / fractionation of stable isotopes due to biological or metabolic processes. To learn more about the risks associated with testing natural levels Carbon-14 samples in a facility handling artificially enhanced isotopes please see the additional information provided after this commment.

1 2021. “Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.”
ASTM International (D6866-21)
2 2018. “What is the BioPreferred® Program?” *US Department of Agriculture*
3 2024. “Biobased Markets Program.” *USDA*
4 2024. “Biobased Markets Program.” *USDA*
5 2018. “What is the BioPreferred® Program?” *US Department of Agriculture*
6 2022. “EU Policy Framework on Biobased, Biodegradable and Compostable Plastics.” *European Commission*
7 2024. “Draft Approach for Implementation of the EPA Label Program for Low Embodied Carbon Construction Materials.” *Environmental Protection Agency*

8 2006. “Determining the modern carbon content of biobased products using radiocarbon analysis.” *Bioresource Technology*, 97(16), 2084-2090.
9 2014. “Can ISCC PLUS Certification Be Misleading– If the Bio-Based Share is Not Labeled Too?” *Renewable Carbon News*
10 2023. “ISCC Press Release July 27, 2023.” *International Sustainability & Carbon Certification*
112024. “Biden EPA Rejects Plastics Industry’s Fuzzy Math That Misleads Customers About Recycled Content.” *ProPublica*
12 2024. “The People of the State of California v. Exxon Mobil Corporation.” Superior Court of the State of California
13 2024. “ExxonMobil Accused of “Deceptively” Promoting Chemical Recycling as a Solution for the Plastics Crisis.” ProPublica
14 2024. “Is Your Water Bottle Really Made From Recycled Plastic?” The New York Times
15 2024. “Board Members of the ISCC Association.” International Sustainability & Carbon Certification
16 2024. “Is Your Water Bottle Really Made From Recycled Plastic?” The New York Times
17 2024. “ACC Issues Principles to Support Growth of Bio-based Plastics Innovation in the US.” American Chemistry Council
18 2022. “EU Policy Framework on Biobased, Biodegradable and Compostable Plastics.” European Commission
19 2019. “ISO 16620-2:2019 Plastics - Biobased Content.” International Organization for Standardization
20 2024. “Regulation (EU) 2025/40 of the European Parliament and Council on Packaging and Packaging Waste” European Commission
21 2019. “ISO 16620-2:2019 Plastics - Biobased Content.” International Organization for Standardization
22 2021. Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis. ASTM International (D6866-21). pp 1-19. doi: 10.1520/D6866-21.
23 2022. “Testing the methods for determination of radiocarbon content in liquid fuels in the Gliwice Radiocarbon and Mass Spectrometry Laboratory.” Radiocarbon

References

2006. “Determining the modern carbon content of biobased products using radiocarbon analysis.” Bioresource Technology, 97(16), 2084-2090.

2014. “Can ISCC Plus Certification Be Misleading– If the Bio-based Share is Not Labeled Too?” Renewable Carbon News https://renewable-carbon.eu/news/can-issc-plus-certification-misleading-bio-based-share-labelled/

2018. “What is the BioPreferred® Program?” US Department of Agriculture https://www.biopreferred.gov/BioPreferred/faces/pages/AboutBioPreferred.xhtml

2019. “ISO 16620-2:2019 Plastics - Biobased Content.” International Organization for Standardization https://www.iso.org/standard/72474.html

2021. “Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.” ASTM International (D6866-21). pp 1-19. doi: 10.1520/D6866-21.

2022. “Testing the methods for determination of radiocarbon content in liquid fuels in the Gliwice Radiocarbon and Mass Spectrometry Laboratory.” Radiocarbon, 64(6), pp.1-10. DOI:10.1017/RDC.2022.35

2022. “EU Policy Framework on Biobased, Biodegradable and Compostable Plastics.” European Commission https://environment.ec.europa.eu/document/download/14b709eb-178c-40ea-9787-6a40f5f25948_en?filename=C OM_2022_682_1_EN_ACT_part1_v4.pdf

2023. “ISCC Press Release July 27, 2023.” International Sustainability & Carbon Certification https://www.iscc-system.org/news/press-release-27-july-2023/

2024. “Regulation (EU) 2025/40 of the European Parliament and Council on Packaging and Packaging Waste” European Commission https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202500040

2024. “ACC Issues Principles to Support Growth of Bio-based Plastics Innovation in the US.” American Chemistry Council https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2024/acc-issues-principlesto-support-growth-of-bio-based-plastics-innovation-in-us

2024. “Draft Approach for Implementation of the EPA Label Program for Low Embodied Carbon Construction Materials.” Environmental Protection Agency https://www.federalregister.gov/documents/2024/02/15/2024-03083/draft-approach-for-implementation-of-the-e pa-label-program-for-low-embodied-carbon-construction

2024. “Biden EPA Rejects Plastics Industry’s Fuzzy Math That Misleads Customers About Recycled Content.” ProPublica https://www.propublica.org/article/epa-rejects-mass-balance-plastics-recycling-safer-choice

2024. “ExxonMobil Accused of “Deceptively” Promoting Chemical Recycling as a Solution for the Plastics Crisis.” ProPublica https://www.propublica.org/article/exxonmobil-plastics-recycling-pyrolysis-lawsuit-california

2024. “The People of the State of California v. Exxon Mobil Corporation.” Superior Court of the State of California https://oag.ca.gov/system/files/attachments/press-docs/Complaint_People%20v.%20Exxon%20Mobil%20et%20al. pdf

2024. “Is Your Water Bottle Really Made From Recycled Plastic?” The New York Times https://www.nytimes.com/2024/08/26/business/energy-environment/tritan-renew-plastic-bottles-recycled.html?u nlocked_article_code=1.F04.bY6M.-T_BnLuNxj6i&smid=url-share

2024. “Biobased Markets Program.” USDA https://www.federalregister.gov/documents/2024/12/09/2024-28431/biobased-markets-program

2024. “Board Members of the ISCC Association.” International Sustainability & Carbon Certification https://www.iscc-system.org/governance/iscc-association/board/

Response to B-40-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-41: Alliance for Automotive Innovation (Emily Jones)

Comment B-41-1

February 13, 2026

Submitted via: calrecycle.commentinput.com

Ms. Csilla Richmond
Department of Resources Recycling and Recovery, Regulations Unit
1001 “I” St., MS-24B
Sacramento, CA 95814

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Proposed Regulations

Dear Ms. Richmond,

CalRecycle has issued proposed revisions to the SB 54Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations.[1] The Alliance for Automotive Innovation (Auto Innovators)[2] appreciates the opportunity to provide comments on this next step in California’s implementation of its extended producer responsibility (EPR) program. Our members will be significantly impacted by these regulations, and our comments reflect our commitment to a continued constructive dialogue with CalRecycle staff.

Although these proposed revisions do not impact our previous comments, we want to urge the Agency to consider adopting our previously stated revisions in the final regulations. The proposed regulations as written lack clarity on key parts of the

proposal, including basic definitions and compliance deadlines. Further, we recommend that the Agency expressly exempt business to business operations. Our previous comments are incorporated by reference and attached to this letter.

Additionally, based on the proposed revisions in the updated regulatory text, Auto Innovators also requests that CalRecycle provide an exemption for any covered material needed to comply with federal or state laws. Several federal and state requirements exist that require automakers to produce covered materials that would fall under the requirements of these regulations, including the Monroney label, Proposition 65 warnings, and recall notices. Other states have exempted covered materials used for documents that are required to be produced on covered materials by applicable laws, and the language in the updated regulation indicates California's willingness to create these exemptions for covered products in the food and agricultural packaging industry. Accordingly, we request that the Agency broadly exempt any covered materials that are produced to comply with federal and state laws.

Again, we appreciate this opportunity to provide constructive comment and recommendations for making this program more workable and less burdensome for both CalRecycle and impacted industry sectors. We appreciate CalRecycle's efforts to create workable regulations for all industries and look forward to continued engagement.

Sincerely,

Emily Jones
Director, Energy & Environment Policy
Alliance for Automotive Innovation

Attachment: Comments from Auto Innovators to CalRecycle submitted October 7, 2025

---

[1] https://www2.calrecycle.ca.gov/Docs/Web/138001

[2] From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.
www.autosinnovate.org.

Response to B-41-1

Comment rejected. CalRecycle rejects this comment because it does not concern the revisions made to the proposed regulations. Instead, it urges CalRecycle to adopt revisions that the commenter suggested during the 45-day comment period concerning the 45-Day Changes. To the extent the third

paragraph of this comment was intended to suggest broadening section 18980.2(a)(2) so that it encompasses all possible conflicts between state and federal laws. CalRecycle declines to do so because exemptions where "unique challenges" or health and safety risks present compliance obstacles are sufficient to provide relief where such conflicts arise. Section 18980.2(a)(2) specifically addresses federal requirements concerning food and agricultural packaging because Public Resources Code section 42060(b)(1) expressly identifies conflicts with regulations issued by U.S. Food and Drug Administration and the U.S. Department of Agriculture only, indicating that food and agricultural packaging is of special concern.

Comment B-41-2

October 7, 2025

Submitted via: calrecycle.commentinput.com

Ms. Csilla Richmond
Department of Resources Recycling and Recovery, Regulations Unit
1001 “I” St., MS-24B
Sacramento, CA 95814

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Proposed Regulations

Dear Ms. Richmond:

CalRecycle has issued a Notice of Action for implementation of SB 54 “Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.”[3] The Alliance for Automotive Innovation (Auto Innovators)[4] appreciates the opportunity to provide comments on this next step in California’s implementation of its extended producer responsibility (EPR) program. Our members will be significantly impacted by these regulations, and our comments reflect our commitment to a continued constructive dialogue with CalRecycle staff.

Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell around 95% of the new light-duty vehicles in the United States. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country. Millions of packaged auto parts are transported across the country and across the globe in order to repair and maintain the vehicles that our members sell; therefore, EPR programs have a substantial impact on automakers.

We appreciate that CalRecycle has refined this second iteration of proposed regulations to reduce some of requirements and resultant burdens and costs outlined in the May 2024 SB 54 proposed regulations.[5] However, we are concerned that in some cases the

current proposal creates a program that actually extends the reach of the program beyond plastics reaching consumers – the stated intent of the Act.[6] Our comments here reflect the basis for our concerns and recommendations to further reduce burden both for CalRecycle and impacted industry sectors.

Key Definitions Needing Clarity

We have specific concerns regarding CalRecycle's proposed definitions for "consumer" and "distribution" and the implications that they have for business-to-business distribution.

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

"Distribution" and "distribute," as used in the Act and this chapter, mean the act of transferring products to another person within the supply chain or to the end user of the products, and "import" means the act of bringing products from outside the state into the state for purposes of sale or distribution…[7]

We request that both of these definitions specifically exclude or exempt business-to-business operations. Including business-to-business operations such as pallet wrap, protective films, and replacement parts as covered activities substantially increases administrative burden and distracts from efforts to reduce single-use packaging. Many companies are already working towards this in business-to-business operations, including by introducing reusable materials and
replacing plastic wrap with more sustainable alternatives where possible. For example, Minnesota has recognized this and has defined covered products so that it excludes materials that a producer distributes to another producer and are not further distributed to a person other than the commercial or business entity that first received the product.[8]

Additionally, defining "consumer" in a way that clarifies that a consumer is a person who purchases goods for personal use would add needed clarity and meet the intent of the Act.

Exemption for Business-to-Business Distribution

In keeping with the intent of the Act and to ensure a workable program, we request that CalRecycle expressly exempt business-to-business operations. In addition to other exemptions in the proposed regulations, such as the hazardous materials exemption,[9] we believe that an exemption such as that cited above for Minnesota would be in keeping with the need to identify plastics reaching consumers. We see no constraints regarding the legislation that would prohibit
this type of exemption.

Concerns with Proposed Fee Calculations

SB54 stipulates that a fee will be imposed on participants but does not specify how that fee should be collected, giving CalRecycle leeway in how fees should be calculated.

The plan shall include a fee for participants of the [producer responsibility organization] PRO consistent with the provisions of Section 42053, set forth the calculation of the fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO's approved plan.[10]

In the draft regulations CalRecycle proposes that the fee be calculated using the following guidelines in the statute:

A PRO shall structure the fee schedule required pursuant to subdivision (a), delineated by covered material category and based on the following factors: (1) The costs to ensure each covered material category meets the requirements of this chapter. Covered material that is easier and less expensive to recycle or compost or that is designed to be recycled into a
similar covered material or a material that is easier to be composted shall be subject to lower fees. The costs may include all of the following:
(A) Costs to develop and sustain viable responsible end markets for each covered material category.
(B) Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined
streams to support the viable responsible end markets for the remanufacturing of the covered material either through curbside collection or other means.[11]

Our further understanding is that fees will be calculated based on the number of plastic components and the weight of plastic covered materials. We would recommend that CalRecycle include additional factors that would make this process more equitable and workable. For example, we recommend CalRecycle consider allowing more simplified/averaged reporting (e.g., an industry calculator),[12] exempting specific components (especially smaller items such as replacement parts), and items that are more difficult to report such as plastic inks and adhesives.

Compliance Deadlines

We are concerned that the proposed regulations do not extend the compliance deadlines even though key components of the program have yet to be developed. Significant guidance needs to be developed to clarify the requirements that "covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable or compostable," "that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates," and that "not less than 65% of plastic covered material to be recycled on and after January 1, 2032."[13] This timing issue holds true for the exemption process outlined in the proposed regulations. It is not clear what form that process will take nor how long it will take. Until

such guidance and the specifications that CalRecycle will require are developed, it will be challenging for producers to request an exemption or for covered items to move to acceptable alternatives.

Conclusion

Again, we appreciate this opportunity to provide constructive comment and recommendations for making this program more workable and less burdensome for both CalRecycle and impacted industry sectors. We strongly recommend that CalRecyle include a business-to-business exemption that would be a practical approach to implementation. We see this as going hand in hand with tightening up the definitions identified above. We also have concerns with the fee calculation approach and would recommend that CalRecycle convene a group of impacted industries to provide real world approaches that would be more effective. And finally, given the delays in the development of this proposal, we urge reconsideration of the compliance dates.

Sincerely,

Emily Jones
Director, Energy & Environment Policy
Alliance for Automotive Innovation

---

[3] https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/

[4] From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future. www.autosinnovate.org.

[5] https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/

[6] "It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to ratepayers, and increase system efficiency." Cal Pub. Resources Code § 42040(b)(3)(B).

[7] https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/

[8] https://www.revisor.mn.gov/statutes/cite/115A/full#stat.115A.144

[9] Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

Packaging used to contain hazardous or flammable products classified by the 2012 federal Occupational Safety and
Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200)
[10] Cal Pub Resources Code § 42051.1(d)(1).
[11] Cal Pub Resources Code § 42053(d)(1)(A)-B).
[12] Other jurisdictions have implemented procedures such as an industry calculator and we would be willing to share experiences and best practices with DTSC.
[13] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54

Response to B-41-2

Comment rejected. CalRecycle rejects this comment because it does not concern the 15-Day Changes. The comment is a resubmission of the letter the commenter submitted concerning the 45-Day Changes and is not relevant to the revisions included in the 15-Day Changes.

B-42: Youngstown Grape Distributors (David Anthony)

Comment B-42-1

Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

We submit comments below in response to the 15-day proposed changes to the permanent regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

We are a California-based grower, packer, and shipper of fresh fruit, including fresh-cut pomegranate arils and bagged stone fruit. Our products are perishable, high-moisture food items that require sealed plastic packaging for food safety, shelf life preservation, and leak prevention.

We respectfully object to the unreasonable scope of the regulations as currently structured, particularly as applied to fresh, moisture-dependent produce packaging.

1. Food Safety and Federal Compliance Conflict
Fresh-cut arils and similar products require moisture-barrier, sealed, food-grade packaging to comply with FDA Food Safety Modernization Act (FSMA) preventive controls. Fiber-based alternatives are not technically viable for wet produce and would materially increase microbial and spoilage risks.

The regulations must explicitly clarify that compliance obligations shall not require packaging substitutions that compromise food safety or violate federal standards.

Response to B-42-1

CalRecycle rejects this comment as described in response to comment B-38-1, which is identical to this comment.

Comment B-42-2

2. Lack of Moisture-Dependent Produce Exemption

The rule does not adequately distinguish between discretionary single-use packaging and essential, food-safety-driven packaging for wet produce. Fresh-cut fruit and high-moisture refrigerated products should be subject to tailored standards recognizing their structural packaging requirements

Response to B-42-2

CalRecycle rejects this comment as described in response to comment B-38-2, which is identical to this comment.

Comment B-42-3

3. Source Reduction Mandate Is Misaligned with Fresh Produce

The 25 percent source reduction requirement fails to account for lifecycle impacts. Plastic produce packaging reduces food waste, shrink, and handling damage. Increased spoilage will increase greenhouse gas emissions through methane from decomposing food, undermining the law's climate objectives.

4. Infrastructure Realities

Many flexible films used for produce packaging are unlikely to meet recyclability thresholds under current statewide infrastructure. Imposing compliance without functional recycling pathways creates liability without a practical compliance route.

5. Disproportionate Economic Impact on California Agriculture

California growers and packers operate under thin margins and face extensive existing regulatory burdens. Sweeping agricultural producers into a CPG-oriented EPR framework risks unintended competitive harm to in-state agriculture.

Requested Revisions

We respectfully request:

• A clear exemption or tailored compliance pathway for moisture-dependent fresh produce packaging
• Explicit protection against food-safety conflicts
• Recognition of lifecycle food-waste tradeoffs in source-reduction requirements
• Phased implementation tied to demonstrated recycling infrastructure readiness

We support responsible environmental stewardship. However, the regulations must reflect the operational realities of fresh food production and distribution.

Response to B-42-3

CalRecycle rejects this comment as described in response to comment B-38-3, which is identical to this comment.

B-43: Pro Citrus Network (Jen Doxey)

Comment B-43-1

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a grower/packer/shipper of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.

Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.

A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU.

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,
Jen Doxey
VP, Business Operations
Pro Citrus Network
Visalia, CA

Response to B-43-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-44: North Shore Greenhouses, Inc. (Kymberly Stewart)

Comment B-44-1

To: CalRecycle:

I am submitting comments on the January 29, 2026, draft regulations implementing SB 54, specifically the revisions to Section 18980.2 (Categorically Excluded Materials), on behalf of our company, a California culinary herb grower.

The revised language significantly narrows the categorical exclusion standard and creates serious concerns for fresh produce operations. Packaging for culinary herbs is driven first and foremost by federal food safety requirements, including FSMA and FDA food-contact standards. These materials are carefully selected to prevent contamination, maintain proper respiration and moisture balance, and preserve shelf life. Any regulatory framework that forces rapid material changes without full consideration of these requirements risks compromising food safety, package integrity, and product quality.

Beyond food safety, fresh herb packaging is engineered to withstand harvesting, rapid cooling, transportation, and retail handling while minimizing spoilage. Changes that reduce structural integrity or limit functional materials will increase shrink, shorten shelf life, and ultimately drive higher food waste—undermining California's environmental and climate goals.

The operational and cost impacts of the revised standard are also substantial. Specialty crop growers operate on narrow margins and have limited ability to absorb increased packaging costs, redesign expenses, supply-chain disruptions, or ongoing EPR fees. These added costs will ultimately be passed through to retailers and consumers.

Finally, the revised exclusion criteria appear impractical in real-world agricultural settings. Requiring producers to demonstrate that no alternative material could possibly comply with food safety laws, and limiting consideration of coatings or design solutions, creates a standard that is extremely difficult—if not impossible—for fresh produce packaging to meet. In many cases, viable alternatives simply do not exist without increasing contamination risk, reducing shelf life, or compromising package performance.

We respectfully urge CalRecycle to reconsider the revisions to Section 18980.2 and restore a clear, workable exclusion pathway that recognizes federal food safety requirements and the essential role packaging plays in protecting public health, reducing food waste, and maintaining supply-chain integrity.

Thank you for the opportunity to provide comments.

Sincerely,
Kymberly Stewart
Purchasing Manager
North Shore Greenhouses, Inc.
Thermal, CA

Response to B-44-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises all the objections that this comment raises. As explained in greater detail in that response, the revisions to section 18980.2(a)(2) clarify how to apply the "not reasonably possible" standard; it did not change the scope of what could be excluded pursuant to that provision or render the exclusion unattainable. Also as explained in that response, the exemptions addressed in section 18980.2.4 adequately address the compliance obstacles—including those related to safety, functionality, or financial constraints or and other practical limitations—that may exist despite there not being any conflict with federal requirements.

B-45: Kingsburg Orchards (mike jackson)

Comment B-45-1
Subject: Comments on SB 54 Final Draft Regulations - 15-Day Comment Period

To Cal Recycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, a [grower/packer/shipper/distributor] of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians.

Packaging is necessary to maintain integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:

- Protect the fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

- No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
- Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge Cal Recycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Sincerely,

Mike Jackson Owner
Kingsburg Orchards Kingsburg CA 93631

Response to B-45-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-46: SeaCa Plastic Packaging (Erika Frayser)

Comment B-46-1

Why This Draft Is Concerning

New language makes categorical exclusions nearly impossible to obtain
Food safety and regulatory conflicts are no longer reasonably accommodated
Compliance requirements are unprecedented, costly and legally risky
Distributors are treated as "producers" simply for selling into California

We have worked to develope a recyclable alternative to a non-recyclable packaging option (wax coated cartons) and have created our own recycling program to support this out of good faith. No large recycling organization was willing to help, but we developed a network to reclaim as much of this packaging as possible. We work directly with end users to identify recycling routes, but this bill puts all our efforts at risk because it increases the cost of a recyclable commodity that works great for packers and shipper of wet veg produce.

Response to B-46-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1. That response addresses the concerns raised in this comment except for the assertion regarding "distributors" and the case-specific objection regarding the the "recyclable alternative" the commenter claims to have developed. That objection cannot justify changes to section 18980.2(a), which accommodates the commenter's concern because, if the commenter is correct that the packaging it developed is "recyclable" and an

"alternative" (which CalRecycle understands to mean packaging that is lawful under federal requirements), there would be no federal requirement preventing compliance with the Act. If the commenter's objection is that real-world restrictions render its packaging not "recyclable" for purposes of the Act, then it would not be considered an "alternative" for purposes of section 18980.2(a)(2).

Regarding the commenter's assertion that, under the proposed regulations, "[d]istributors are treated as 'producers' simply for selling into California," that is not a valid objection. The statute (Public Resources Code section 42041(w)(1) through (3)), not the proposed regulations, dictates that the act of selling goods into California may, under certain circumstances, render the entity doing so a "producer." Moreover, that effect is not relevant to any of the revisions made to the 45-Day Changes. The changes in section 18980.2(a)(2) concern when certain packaging should be considered not "covered material." Section 18980.2(a)(2) is only relevant to whether an entity is a producer because it might affect whether there is any producer at all (i.e., whether there is any packaging subject to the Act). The changes do not affect the extent to which a distributor may be a "producer" based on their sale of goods whose packaging is covered material.

Comment B-46-2

Sustainability Opportunity!

SeaCa Plastic Packaging isready to help you easily plug into the sustainable CORR Program that reduces and problem-solves packaging waste. Quickly boost your sustainability impact by leveraging a 100% closed-loop recycling operation developed by SPP and approved by the FDA.

Let's Close The Loop

We need your help to close the loop! Mostlikely you have piles or bales of empty mixed material taking up space and resources. Unlike using wax corrugated cartonsthat must be disposed of in landfills, SPP has another way. SPP invested in developing a wax alternative for environmentally friendly recyclable packaging. Recycle resin #5 polypropylene (PP) is used to create plastic corrugated cartons that divert waste from landfills, increase package efficiency, and reduce trucking costs with lighter packaging design. This means fewer harmful emissions, less ground pollution, and a lighterload on our planet.

Our Challenge

The challenge is to collaborate on collecting recyclable cartons at their end-of-use life. By working together we can use collection process methods that are ideal for your operations and regions. This effort will help integrate PCR (post-consumerresin) back into the closed loop recycling operation. SPP hasimplemented a series of collection programsfrom large retailers to local co-opsto collect PP corrugated packaging. **SPP is excited and ready to welcome you intothe CORR Program.**

CORR Program

The CORR Program began with SPP who set out to develop a recycling program—Creating Opportunity with Recycle Resin—that would be able to reintroduce collected material into new packaging as part of the cartons core. This reintroduction of PCR would help achieve the goal of being able to support customers with a carton that has at least 25% PCR content. SPP invested in a joint venture project with a local recycler near their Arizona manufacturing plant to cut down on transportation costs and ensure efficiency in theirrecycling efforts. They had this process approved by the FDA and received their official FDA NOL in 2019. Their goal is to provide the end users with compensation for their collection, which is all calculated from a delivered price at the recycler less transportation And/or other costs accrued.

7 CORR Steps – Boiler Plate Plan

Step One
SPP manufactures polypropylene (PP) corrugated cartons

Step Two
Processors pack and ship product direct to customer or distributors in cartons

Step Three
DC (distribution center) receives and distributes products in cartons to stores for stocking

Step Four
After stocking, stores separate and collect cartons to ship back to DC

Step Five
DC receives cartons for collection and shipment to SPPs approved recycler
Current Collection Methods Available:
1. Standard
2. Consolidated Pick-up Routes
3. Drop Trailer
4. Baler Payback
5. Recycling/MRF Partnership

Step Six
Approved recyclerreceives bales, reprocesses them and generates PCR (post-consumer resin) to send back to SPP

Step Seven
PCR is received back at SPP for reintroduction into new cartons

Customer Testimonial - Partnering for a Better World

Lakeside believes in improving health and well-being for both people and planet. All our commodities are freshly delivered in 100% recyclable cartons. We have partnered with SPP since 2017 to develop and field test their polypropylene corrugated cartons. PP corrugated cartons meet all of our packaging requirements at fullscale for performance

and durability. By choosing to use these 100% recyclable cartons we could keep up to 6 million pounds of wax cartons out of landfills annually.

Contact for CORR Program Info
Erika Frayser | Director of Operational Excellence
253-813-5340 | sustainability@seacapkg.com

Response to B-46-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations. It does not concern any element of the proposed regulations.

B-47: Ippolito International (Ron Mondo)

Comment B-47-1

To CalRecycle:
I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, Ippolito International LP, a [grower/packer/shipper/distributor] of fresh produce operating in California.
The revised language in Section 18980.2 (Categorically Excluded Materials) is concerning and unduly restrictive. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.
California is currently one of the nation's top producers of fresh vegetables. Over many decades, growers in this state have worked and innovated to provide healthy foods that can be efficiently and safely transported to the end consumer. Along the way, technologies in packaging have contributed significantly towards fresh, intact arrival to many millions of homes. It is fair to say that vegetables are more enjoyable, consumed more frequently, and contribute to a healthier America as a result of the use of protective packaging materials.
Based on this, the revised language in Section 18980.2 (Categorically Excluded Materials) is misguided. Amidst many regulatory changes, California produce growers and processors in California have committed to compliance with Federally mandated food safety regulations. Food safety requirements are diligently followed (along with additional voluntary measures) . Plastic packaging currently is the standard.
In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
Protect fragile produce from physical damage during transit and handling
Optimize transportation efficiency which reduces energy demands on the supply chain

Maintain airflow, moisture control and structural stability
Preserve shelf life and product quality
Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
Reduce spoilage and contamination across the supply chain
Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal
Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.
As drafted, the regulation requires producers to prove that:
No alternative packaging complies with FSMA, FDA food-contact requirements and California law.
Many alternatives have been tested. Thus far, these alternatives have not been able to provide the same functionality as the industry gold standard. With the risk of increased of food waste, contamination, and costs to consumers.
Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
A full package redesign would still fail food safety or legal requirements. Food safety and healthy nutrition is a top priority for the fresh produce industry.
This standard is unworkable. It does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.
Without a viable categorical exclusion, SB 54 would impose:
Unrealistic recycling and recyclability mandates
Permanent caps on single-use plastic packaging with no accommodation for business growth
Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Thank you for considering these comments.
Sincerely,
Ron Mondo
Owner
Ippolito International LP
Salinas, California

Response to B-47-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment..

B-48: vicolo wholesale (Raghupreet Singh)

Comment B-48-1

I represent a pizza manufacturing facility serving the State of California.

While I recognize SB 54 and EPR legislation as efforts toward environmental reform, the regulations as currently written will materially impair our ability to operate efficiently while maintaining compliance with USDA and FDA food safety requirements.

There are no commercially viable alternatives to plastic-based flexible packaging for our products. We cannot transition to paper, glass, or other materials without compromising product safety, integrity, and regulatory compliance. Although recyclable or "recycle-ready" resins are under development, there is currently no established recycling stream in the United States for packaging that has been in direct contact with perishable food products. In addition, many of these emerging materials have not been validated for performance in high-abuse supply chains.

Materials such as nylon and polyester are critical to protecting our perishable products. Nylon provides puncture resistance necessary to withstand distribution and handling. Without it, spoilage and failure rates increase significantly (estimated 15–20%). Polyester substrates are essential to maintaining line speeds and operational efficiency. Removing them would reduce production efficiency by approximately 20–25%, increasing run time, emissions, rework, and spoilage.

The most sustainable packaging solution for perishable goods is one that protects and extends shelf life. This approach aligns with USDA and FDA requirements and helps reduce food waste. In the United States, over one-third of food is wasted. Compromising packaging performance will increase spoilage and overall carbon emissions across the supply chain.

As written, SB 54 may create conflicts with federal food safety regulations. We respectfully request that exemptions be granted where compliance with recyclability mandates would undermine food safety and increase waste.

Thank you.

Response to B-48-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-9-1, which raises the same issues and makes the same request as does this comment.

B-49: CMI Orchards, LLC (Bob Mast)

Comment B-49-1
Comments on SB 54 Final Draft Regulations – 15-Day Comment Period

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act” regulation on behalf of CMI Orchards, a grower, packer, and shipper of fresh produce operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word “mandatory” and the narrow definition of what is “reasonably possible” effectively eliminates the categorical exclusion pathway for fresh produce packaging that is essential to reducing food waste and mitigating greenhouse gas
(GHG) emissions.

Preventing food loss is one of the most effective climate strategies in the produce supply chain. Fresh fruits and vegetables are highly perishable, and packaging plays a central role in preserving quality, preventing shrink, and keeping produce viable throughout harvesting, cooling, transportation, and retail handling. Fresh produce packaging is engineered to:

- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency, reducing energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

These functions are not merely aesthetic, or marketing driven; they directly reduce food waste and, by extension, GHG emissions associated with farming, cooling, transportation, and disposal of unsold foods. As multiple lifecycle studies show that the climate impact of food waste far exceeds the impact of the packaging used to prevent that waste, policies should prioritize waste prevention performance as a core environmental benefit.

Additionally, federal food safety packaging statutes, regulations, and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:

- **No alternative packaging complies with FSMA, FDA food-contact requirements, and California law.** The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Alternative packaging that does exist requires additional transportation, as it takes up more space to ship, resulting in an increase in emissions. Alternative packaging also costs more to sell fewer pieces of fresh produce.
- **Conflicts cannot be resolved through liners, coatings or closures.** Removing access to tools that can support the transition to alternative packaging will stifle advancements and packaging technology advancements. Produce is packed in a wet environment. Liners are required to ship products in a fiber container to avoid compromising structural integrity of the product.
- **A full package redesign would still fail food safety or legal requirements.** Food safety is a critical priority for the fresh produce industry. Without plastic or wax liners on fiber packaging, moisture can create a food safety risk.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life, or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes the environmental benefit of reducing food waste and GHG emissions through packaging use, federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety.
Thank you for considering these comments.
Sincerely,
President, CMI Orchards
CMI Orchards
Wenatchee, Washington

Response to B-49-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-50: Emerald Packaging (Kevin Kelly)

Comment B-50-1

February 13, 2026

Submitted Electronically via: https://calrecycle.commentinput.com/?id=3ikJbFpZN

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: SB 54 Plastic Pollution and Packaging Producer Responsibility Act Permanent Regulations 15- Day Comment Period

Dear Ms. Richmond:

Emerald Packaging thanks you for the opportunity to provide comments to CalRecycle on the proposed Senate Bill SB 54 (Allen, 2022) ("SB 54" or the "Act") Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026 ("Draft" or "Draft Regulations"). Emerald is the largest manufacturer of flexible packaging for produce in the country, comprising around 98% of our revenue. We're a family-owned company founded in 1963 based in Union City, California, where we employ 265 people who earn a living wage, on average over $40/hour.

More importantly, we're one of the leaders in sustainability in the flexible packaging industry. We were one of several California flexibles companies that proposed creating a recycling system for our packaging in 2000. Back then, small groups like ours had to get the support of the American Chemistry Council to introduce any legislation impacting plastics. They summarily killed it. As early as 2002 we teamed with Walmart and used compostable corn-based films for their fresh-cut spinach packaging. We rolled out food grade 30% post-consumer recycled resin packaging in 2024. Today we run over one million pounds of PCR annually in romaine, lettuce, and cauliflower bags, amongst other commodities. For the last two years we've been working on a path to commercialize paper for produce, a project that requires considerable research and expense. Finally, we collaborate extensively with the Western Growers Association on extended producer responsibility issues, our customer's main trade association.

Our company supported the August 22, 2025, SB 54 Draft Regulations as the language offered a viable and clear framework for compliance for fresh produce packaging with the ability to apply for a categorical exclusion, as permitted by Public Resource Code section 42060(a)(3)-(4) and as required by section 42060(b), in written comments submitted on October 7, 2025 with the Western Growers Association. While I understand the Department's challenges in creating regulations while buffeted by political pressures on all sides, the revised language in Section 18980.2 Categorically Excluded Materials is unworkable for the produce industry. The January 29, 2026, revisions introduce requirements that are effectively impossible for fresh produce packaging to satisfy. They eliminate the workable framework CalRecycle proposed in August 2025 and replace it with an exclusion pathway that is unattainable, raising concerns regarding the ability of my customers and myself to comply.

Instead of the current language, we instead propose wording that even Senator Allen, author of SB54, may like while accommodating the needs of food packaging. We support modifying the categorical exclusion language in Article 2, Section 18980.2, which is firmly grounded in existing statutory authority and limited to circumstances where no reasonably possible compliant alternative exists. To ensure that the language is both feasible to meet and narrowly focused on the needs of food packaging that must comply with applicable federal state laws, rules, and guidelines, we recommend removing the words "food" and "mandatory", and the three qualifiers under subsection (B) (i), (ii), and (iii) in this section. In many ways this tightens the requirements for exclusion but provides relief to sectors that were supposed to receive it in the first place. I only know this since I've been involved with the Western Growers on issues surrounding the passage and implementation of SB54 since 2021.

The exemption language in Section 18980.2.4 doesn't work for produce. No doubt it does give companies the opportunity to argue for relief. But it also presents challenges that are as significant and more burdensome than those in the categorical exclusion. The exemption process only gives a two-year reprieve from complying with recycling rates but still paying the high fees imposed by Circular Action Alliance. There's the possibility of a five-year extension but with very stiff rules around obtaining. The applying organization has to review every possible replacement for a plastic package no mater whether it complies with the function plastic serves. It has to explain the science behind the materials to non-scientists with little or no knowledge of the sector. The language is also too permissive regarding how CAA evaluates applications and retains discretion over whether to advance it to CalRecycle. As written, there is little incentive for the PRO to consider applications. I'd suggest the language change from "may" to "shall".

The timeframe to develop new food packaging materials is long, backbreaking and expensive. Products must undergo extraction studies and testing to determine compliance with the Code of Federal Regulations (CFR), a process that can take months to years. The resulting data must then be submitted to the FDA for review, a process which can take several additional years. Finally, even when packaging

materials are already FDA compliant, development timelines for the packaging itself often spans years to complete. This development process, called the “Valley of Death” by the scientists and researcher, is the high-risk phase between lab validation and market-ready production, where many startups fail due to misjudged scaling and funding, among other reasons.

Scaling production of any new materials will take billions of dollars and decades to achieve. I began working with compostable packaging over 25 years ago. Capacity remains very limited thanks to the expense of the material and it’s failure to match the functionality of plastics. Plastic is central to the preservation of fresh-cut salads because they keep the lettuce alive by letting oxygen into the package and carbon dioxide out, a miracle of science that extends shelf-life and reduces food waste. No compostable material has that function. Moreover, building out a corn or cellulose-based packaging industry wouldn’t happen in my lifetime even with eco-modulation fees. Like anything, it takes a long time to raise money and build factories. This is the real world, unfortunately.

Making the case for plastic isn’t just done by industry. The Oregon State Department of Environmental Quality (DEQ) performed a study to assess the connection between food waste and packaging. The report's central thesis is that packaging should be viewed as a tool to protect the "embedded" environmental resources of food. Among their many findings, they state, "Packaging plays an important role in protecting food from damage and contamination and extends the useful life of food items on the retail shelf and at home, thus potentially reducing wasted food and its environmental impacts.” In assessing the relationship between food waste and GHG they concluded, "In general, the GHGE [Greenhouse Gas Emissions] associated with manufacturing food packaging is typically small relative to the emissions associated with producing and processing the food itself.”

The report argues that for fresh produce, the "net environmental benefit" of packaging is high because produce is resource-intensive to grow but very easy to damage. In short, the most "sustainable" package is the one that ensures the food actually gets eaten. The Oregon DEQ report concludes that the most effective way to reduce the environmental footprint of our food system is prevention. Because packaging is a primary tool for prevention, "more" or "better" packaging is often the greenest option. The report is available here at: State of Oregon Department of Environmental Quality (DEQ). "Food Product Environmental Footprint Literature Summary: Packaging and Wasted Food" 2017 https://www.oregon.gov/deq/FilterDocs/PEF-Packaging-FullReport.pdf.

Just this past January the government of Canada weighed in on the implications of banning produce packaging to costs across the user chain, including consumers. Agriculture and Agri- Food Canada estimated that prices at the grocery store for produce would rise 5% to 10% if plastic were replaced by other materials, like compostables, because of the cost differential between plastic and any possible replacement. It also found that shipping produce without any packaging would

dramatically increase food waste across the supply chain, thereby increasing Greenhouse Gas Emissions (GHG). In fact, the increase in GHG from food waste would swamp that from the production of plastic. The full report is available here: https://agriculture.canada.ca/en/sector/horticulture/reports/estimating-cost-implications-reducing-plastic-packaging-fresh-produce.

I understand and appreciate the work that CalRecycle has put into formulating the regulations to enact SB54. I know myself and many others in the produce industry deeply support recycling because we do it in our own businesses every day. In fact, Emerald became a certified California Green Business several years ago in part because we recycle almost everything we touch. But the harm done to certain foods including produce in the latest draft will loom large in two or three years when the implication of the proposed regulations becomes all too clear, giving recycling a bad name it doesn't deserve.

Best wishes

Kevin Kelly
Chief Executive Officer
Emerald Packaging, Inc.
kevin@empack.com
Mobile: (510) 384-5059
www.empack.com

Response to B-50-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same objections and makes the same recommendations as does this comment. CalRecycle also rejects the assertion that removing the word "mandatory" and the criteria contained in 18980.2(a)(2)(B)(i) through (iii) would "tighten[] the requirements for exclusion." Regarding the word "food," no explanation is given for why that term should be removed; CalRecycle declines to remove it because doing so would narrow the exclusion so that it would fail to fulfill the mandate of Public Resources Code section 42060(b), which is not concerned only with agricultural products. In addition to the reasons provided in response to comment B-3-1, CalRecycle also declines to remove the word "mandatory" because the act of "complying" with some regulation, rule, or guideline is logically incompatible with the regulation, rule, or guideline not presenting any requirement (i.e., something "mandatory"). Similarly, removing the criteria in clauses (i) through (iii) would leave unclear how CalRecycle would uniformly apply the requirement that it be "not reasonably possible" to use an alternative to comply with relevant federal requirements. Without these provisions, the proposed regulation would fail to meet the "clarity" standard of Government Code section 11349.1(a)(3).
Regarding the applicability of section 18980.2.4, which sets forth the exemptions pursuant to Public Resources Code section 42060(a)(3) and (4), the commenter

asserts that it "doesn't work for produce." The commenter, however, does not explain how the burden of applying for such an exemption is particular to produce or why those responsible for single-use packaging for produce, as opposed to those responsible for all other packaging, should be exempt from funding the program intended to reduce such packaging. The commenter also asserts that applying for exemptions requires review of "every possible replacement" and explanation of the "science behind the materials to non-scientists with little or no knowledge of the sector." There is no requirement that "every possible replacement" be reviewed, and the objection to having to explain the justification for the exemption—regardless of whether the commenter's unexplained assumption about the expertise of those reviewing the explanation is correct—is unreasonable on its face, effectively arguing that entities should not have to justify why they are entitled to a benefit under the Act. Regarding the PRO's discretion over applications for exemptions, the process set forth in section 18980.2.4(a) and (b) is consistent with the PRO's overall function and necessary for efficient implementation of the Act, as set forth in greater detail in the Initial Statement of Reasons.

Regarding the commenter's remaining assertions concerning food waste, net benefits, and the cost and time required to develop new packaging, to the extent those assertions are relevant to the revisions made in section 18980.2(a)(2), they do not affect CalRecycle's rationale for not further revising it, as described in this response and in response to comment B-3-1. Moreover, for packaging that cannot qualify for exclusion under section 18980.2(a)(2) but may obtain an exemption due to "unique challenges," development time and expense challenges can be accommodated through the phase-in plan that must be submitted with the application for that exemption.

B-51: VegFresh Farms LLC (bob wright)

Comment B-51-1
Comments Regarding SB54

1. The underlying intent of SB54 is to eliminate plastic or ensure that plastics are recycled.
2. The legislation seems intent to limit any exceptions to this purpose.
a. It makes exclusions impossible to obtain.
3. The assumptions driving SB54 are fundamentally flawed:
a. It is not true that all plastic is bad.
b. It is not true that all plastics can be effectively or economically recycled.

Without plastic packaging:

1. Our food would spoil much faster

2. Nearly ALL convenience-based produce options would be eliminated form grocery shelves.
3. Food waste would increase
4. More packaging would be wasted
5. Food safety would be compromised
6. There are no viable large-scale alternatives to plastic

The proposed legislation will:
a. Increase the cost of plastic packaging by:
i. Requiring PCR content
ii. Adding tax penalties
b. Increase the consumer cost
c. Increase food spoilage
d. Increase total carbon footprint of packaging
i. Alternative products such as paper, for example, have a carbon footprint 4-5 times that of plastic.
ii. Recycled products (PCR) have a higher carbon footprint than virgin material.

What is behind the legislation:
o Recycling lobbyists have heavily participated in legislative efforts.
o These groups have shaped many large corporations "sustainability goals."
o Is their intent to save the planet or to support their recycling businesses?
The recycling industry, after massive public and private investment, after 30 years, has achieved a recycling rate of 5% - 9% of plastic produced depending upon what data you believe. That's 910,800,000,000 pounds of plastic annually that go to landfills, litter, oceans, incinerated, … Recycling companies will quote a statistically skewed~30+% recycled figure. They qualify that by considering only plastic that is PET and only disposed of into the proper recycling stream.)

Why are we trying to tax the consumer to fund an industry with this track record?

There are technological alternatives available today that will eliminate plastic waste problems without compromising packaging performance or cost. These technologies eliminate plastic pollution for polyolefin plastics by incorporating additives that enable bio-assimilation with no residual microplastics.

This legislation effectively discourages the use and development of these opportunities to eliminate plastic waste. These opportunities come at a very low cost, without a tax, and without the consumer financing of the entire recycling industry.

To legislate against the development of better alternatives is NOT in the interests of the environment or the citizens that legislators are empowered to protect.

A stated goal of the plastic recycling industry is to increase the cost of plastic to the point that everyone will want to participate in the recycling effort.

Consider how valuable that plastic bag would have to be to the consumer to ensure that it is recycled instead of discarded?

This tax is just the beginning of an effort to support a failed industry and recycling model on the backs of the consumer who already struggle to afford food.

This legislation is bad for:

- **Consumers**
- **Agricultural and food production industries**
- **Food waste reduction efforts,**
- **Plastic waste reduction efforts**
- **Food safety**
- **Total carbon footprint of packaging.**

1400 W Rincon St Corona, CA 92880
(714) 446-8800
vegfresh.com

Response to B-51-1

Comment rejected. The comment concerns the legislation pursuant to which CalRecycle is proposing regulations, not those regulations themselves. Accordingly, no response is required. To the extent the commenter intended to assert that section 18980.2(a)(2) makes obtaining an exclusion to the statute unattainable, CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises that same objection.

B-52: The Procter & Gamble Company (Julie Froelicher)

Comment B-52-1

February 6, 2026
Via Electronic Submission

Ms. Zoe Heller
Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act 15-Day Comment Period

Dear Director Heller:
The Procter & Gamble Company (“P&G1”) submits the following letter in acknowledgment of the permanent regulations for SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, published on January 29, 2026 (“Permanent Regulations”) that made limited revisions to the Formal Proposed Regulations originally released on August 22, 2025. As the world’s largest consumer goods company, we have a concerted interest that the SB 54 program drives maximum sustainability benefits while ensuring affordability and availability for all Californians; protecting health and safety of California consumers; enabling federal regulatory compliance; and providing continued opportunity for innovation and product quality in California.

1 The Procter & Gamble Company serves nearly five billion people around the world with its brands. The Company has one of the strongest portfolios of trusted, quality, leadership brands, including Always®, Ambi Pur®, Ariel®, Bounty®, Charmin®, Crest®, Dawn®, Downy®, Fairy®, Febreze®, Gain®, Gillette®, Head & Shoulders®, Lenor®, Olay®, Oral-B®, Pampers®, Pantene®, SK-II®, Tide®, Vicks®, and Whisper®. The P&G community includes operations in approximately 70 countries worldwide. Please visit http://www.pg.com for the latest news and in-depth information about P&G and its brands.

Response to B-52-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment B-52-2

The limited revisions in the Permanent Regulations do not improve the ability to implement the SB 54 program. These revisions do little to reduce complexity for producers or costs for California consumers. The necessary changes we previously recommended for the Formal Proposed Regulations to best serve the interests of California consumers have gone unaddressed in the Permanent Regulations, so we have appended them again to this cover note to reinforce their criticality for a functional program.

Response to B-52-2

Comment rejected. This comment offers the general objection that the revisions to the proposed regulations "do little to reduce complexity for producers or costs for California consumers." The remainder of the commenter's submission clarifies that this criticism is directed at portions of the 15-Day Changes other than those that CalRecycle has revised. The commenter supports its objections by attaching the comments it submitted in response to the 45-Day Changes (B-11-1 through B-11-12), and none of those comments concern section 18980.2(a)(2), either. CalRecycle has responded to those comments separately. Accordingly, no further response is required. However, to the extent this comment could be construed as a general criticism of the revisions in section

18980.2(a)(2), CalRecycle rejects it for the reasons provided in response to comment B-3-1.

Comment B-52-3

Of significant concern, there are aspects of the Permanent Regulations that conflict with the intent of SB 54 to improve circularity and recycling. The requirements for **Detachable Components** (Section 18980.1. and Section 18980.3) are a clear example. The Permanent Regulations classify any component a consumer can detach, such as a bottle cap or perforated shrink sleeve, as separate and distinct packaging that must comply with all SB 54 requirements. Consumers have long been educated to reattach bottle caps prior to recycling the larger package. Reattaching caps to bottles, regardless of cap size, enables recovery of the cap material within the recycling stream and leads to even greater circularity. The Permanent Regulations should seek to reinforce this favorable consumer recycling behavior and not drive distinction between the bottle cap and the package. Similarly, application of a perforation on a shrink sleeve label is a process aid to help material recycling facilities (MRFs) remove labels in the recycling process. The perforation ensures proper sorting by allowing visibility of the bottle (e.g., clear PET bottles sort properly to clear PET streams). However, the Permanent Regulations render the perforated label a non-recyclable, detachable component. This complexity will discourage producers from adding perforation to shrink sleeve labels, thereby reducing proper sorting in the recycling stream and lowering recycling yields. The Permanent Regulations need to align with the Association of Plastic Recyclers (APR) Design Guides to reinforce optimal recycling behavior and not disrupt it.

P&G strongly urges the Department to **recognize physical recycling technology** as an acceptable responsible end market technology, in addition to mechanical recycling. Physical recycling enables a method to clean plastic and remove contaminants from the recycling stream in a manner that also results in significantly reduced greenhouse gas emissions compared to virgin resin. Physical processes are not chemical recycling because they maintain “plastic to plastic” recycling, as they do not chemically alter the plastic polymers or break chemical bonds but rather remove both intentionally and unintentionally added materials to vastly improve the quality of recycled plastics and produce a high-quality post-consumer recyclate (PCR). This broadens the potential applications for recycled plastic and promotes continued circularity.

The inordinate length of time it has taken to develop regulations for this program has made it untenable to expect compliance by the statutory deadlines. Producers will need to rely upon broad material class exemptions to have sufficient time to make packaging material changes, to wait while recycling infrastructure develops in California, and to comply with the mandated 30% recycling rate by 2028. P&G urges the Department to be prepared to quickly review and process the exemption applications that you will receive from Circular Action Alliance on behalf of producers once the Permanent Regulations are finalized so that California consumers do not suffer from lack of accessibility to products upon which they rely in their daily lives.

Thank you for considering P&G's recommendations that are appended to this cover note and discussed at length. Please contact me if you have any questions or would like more information about the practical impact of the Permanent Regulations on producers and California consumers.

Sincerely,

Julie Froelicher
Senior Director, Global Product Stewardship
The Procter & Gamble Company
1 P&G Plaza
Cincinnati, OH 45202
Froelicher.jm@pg.com

Response to B-52-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

B-53: House Foods Holding USA Inc. (Fumiya Uni)

Comment B-53-1

Comments on SB 54 Final Draft Regulations - 15-Day Comment Period

Subject: Request for Categorical Exclusion of Packaging for Commercially Packaged Refrigerated Tofu and Similar Pasteurized Perishable Foods (Section 18980.2, SB 54)

To: CalRecycle
Re: SB 54 Draft Regulations — Article 2, Section 18980.2 (Categorically Excluded Materials)

Introduction

Thank you for the opportunity to comment on Section 18980.2 regarding categorically excluded materials under California's SB 54 implementation. Our company manufactures commercially packaged refrigerated tofu products, a category of potentially hazardous foods requiring validated heat processing (pasteurization) and continuous refrigeration to control pathogenic microorganisms. Although refrigerated tofu is not governed by product-specific federal regulations, its food-safety profile necessitates strict controls that only certain packaging materials can reliably achieve. These needs align with the intent of categorical exclusions under SB 54 for materials essential to meeting federal health and safety mandates, specifically under the FDA Food Safety Modernization Act (FSMA) and 21 CFR Part 117 (Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food).

1) Characteristics of Refrigerated, Packaged Tofu Relevant to Product Safety

- Neutral pH
- High water activity
- High protein content
- No preservatives added
- Cannot be produced under sterile conditions*

*Sterile conditions cannot be maintained throughout upstream steps (coagulating, molding, pressing, and cutting), and pressure sterilization (retort) is not feasible for tofu because it degrades shapes, texture, and flavor.

These characteristics create favorable conditions for microbial growth. To ensure product safety, tofu undergoes a company validated post-packaging thermal treatment (pasteurization), typically above **176°F (80°C) for at least 30 minutes** in water at atmospheric pressure, followed by rapid cooling and cold-chain distribution to prevent the growth of heat-resistant pathogens. This underscores its classification as a high-risk, perishable food.

Implication: These properties heighten susceptibility to pathogen growth if packaging cannot withstand heat processing stresses, rapid cooling, or if seal integrity fails. Robust hermetic seals and thermally durable packaging structures are therefore essential.

2) Manufacturing & Packaging Overview of Refrigerated Tofu

- Whole soybeans are soaked, then ground with water. The resulting slurry is cooked at temperatures above 212°F (100°C) for 3–10 minutes, after which the pulp (okara) is removed to produce soymilk.
- The soymilk is mixed with coagulants; the resulting curd is broken into small pieces, transferred to a mold, and pressed to achieve the desired firmness.
- The pressed block is cut, placed into containers, filled with water (as applicable), sealed, and pasteurized in the final package. Because sterility cannot be maintained prior to sealing, post-packaging pasteurization and refrigerated distribution serve as critical controls.
- Common retail formats include:

(a) hermetically sealed, water-filled rigid plastic containers with lidding film
(b) vacuum-sealed flexible packaging (used for firmer tofu varieties that maintain structural integrity without immersion)

3) Packaging Performance Requirements Necessary for Product Safety and Integrity

- Resistance to moisture and immersion in water
- Tolerance to pasteurization temperatures while maintaining structural stability
- Strong hermetic seals capable of withstanding internal pressure and expansion during pasteurization and rapid cooling
- Tamper-evident features and seals that maintain integrity throughout cold-chain distribution
- Rigid containers with adequate mechanical strength and support to preserve product integrity

4-a) Limitations of Recyclable/Mono-Material or Compostable Films (Current Technology)

Currently, no compostable or recyclable mono-material films with a single melting point have demonstrated the ability to withstand the thermal processing required to meet the company validated preventive controls mandated by the FDA Food Safety Modernization Act (FSMA), including moist-heat pasteurization at high temperatures, internal inflation, and the seal stresses generated during heating. Seal failures compromise hermeticity and increase microbial risk. Thus, multilayer construction remains necessary.

4-b) Infeasibility of Achieving the 25% Source-Reduction Target for Rigid Plastic Containers and Flexible Packaging Films

Rigid Containers

A 25% reduction in material thickness would significantly impair hermeticity and structural rigidity, compromising product integrity and safety during post-packaging pasteurization and subsequent distribution.

Safety and Quality Concerns Associated with Lightweighting:

1. **Loss of hermeticity due to container–seal interface leakage during cooling —** Rapid cooling causes internal pressure to drop; insufficient wall thickness can cause the container to pull away from the seal.
2. **Seal failures (peel-off, rupture, bursting) —** Thin flange areas or heat-seal layers cannot maintain hermeticity during thermal expansion; flange flatness declines under stress and polymer seals weaken at high temperatures.
3. **Cracking, corner fractures, or micro-leaks after cooling —** As rigid plastics soften when heated, they must retain adequate thickness to maintain structural rigidity. Failures enable microbial ingress.
4. **Insufficient structural rigidity during manufacturing and distribution —** Tofu is fragile and lacks durability; it requires rigid containers with stable support.

Flexible Films

Reducing gauge or eliminating layers to achieve a 25% weight reduction would compromise hermetic seal integrity under thermal and pressure stresses. This elevates the risk of seal failure, pinholes, microbial contamination, and the creation of public-health hazards.

Expected issues with lightweighted flexible films include:

1. **Seal failures—peel, burst, or micro-leaks —** Thin seal layers lack adequate molten mass or strength to withstand high internal pressure; micro-channel leaks may form after thermal cycling.
2. **Delamination of multilayer laminates —** Thin tie layers lose bonding strength under steam, pressure, and heat, leading to bubbles, wrinkles, or full separation.
3. **Film deformation, pinholes, and flex-cracking —** Thin outer or barrier layers deform during high-temperature pasteurization; thin areas created during thermoforming are especially vulnerable.
4. **Heightened sensitivity to seal contamination —** Thin seal layers cannot absorb minor contaminants; even slight interference significantly increases leak risk.
5. **Punctures and abrasions —** Pasteurization baskets, rails, and contact points more easily damage thinner films.

If Tofu were not a potentially hazardous food, alternative materials such as paper, compostable plastics, or mono-material films might be feasible. However, current science and packaging technologies do not provide safe alternatives capable of withstanding pasteurization while ensuring consumer protection.

Thus, recyclable or compostable films and a 25% reduction in material weight for both flexible films and rigid containers are not reasonably achievable without undermining validated food-safety controls. Rigid containers and multilayer films used for this product category should therefore be deemed categorically excluded under Section 18980.2.

5) Request under SB 54 Section 18980.2

We respectfully request that CalRecycle designate packaging materials used for highly perishable foods requiring post-packaging pasteurization—such as refrigerated Tofu—as categorically excluded under Section 18980.2. This designation is essential for ensuring continued compliance with federal food safety mandates and preserving public-health protections by ensuring continued availability of validated, hermetic, thermally durable packaging and preventing substitution with materials incapable of withstanding pasteurization, which would increase food-safety risks.

Conclusion

Refrigerated Tofu presents unique microbiological hazards that require multilayer flexible films and rigid containers capable of maintaining hermeticity throughout post-packaging pasteurization and refrigerated distribution. Currently, no recyclable or compostable mono-material alternative films can fulfill these safety-critical functions. Likewise, achieving a 25% reduction in packaging weight for either flexible films or rigid containers is not feasible without compromising product safety and quality.

We respectfully urge CalRecycle to recognize these constraints and classify such packaging as categorically excluded under Section 18980.2 to avoid compromising consumer protection.

Thank you for your consideration of these comments.

Sincerely,
Takayuki Doue, CEO
House Foods Holding USA Inc.
Garden Grove, California

Response to B-53-1

Comment rejected. No response is necessary to any portion of this comment that does not relate to the revisions made to the proposed regulations. This comment relates to section 18980.2(a)(2) only with respect to the request that packaging for "highly perishable foods requiring post-packaging pasteurization" be granted a categorical exclusion. No change is appropriate because codifying a categorical exclusion for a class of products would be based on currently available packaging options, leaving CalRecycle no ability to tailor the exclusion to accommodate advances in packaging except through formal rulemaking. More importantly, section 18980.2(a)(2) already fully accommodates the commenter's stated concerns. The commenter bases the request on the need to comply with "federal food safety mandates," but section 18980.2(a)(2) ensures that packaging needed for such compliance will not be considered "covered material." To the extent the commenter's request is based on health and safety issues that may arise despite there not being any conflict with federal requirements, CalRecycle rejects the request because, as explained in greater detail in response to comment B-3-1, the exemptions available under Public Resources Code section 42060(a)(3) and (4) (addressed in section 18980.2.4 of the proposed regulations) accommodate that concern. Lastly, regarding the commenter's concern over source reduction, that concern is based on a misunderstanding of source reduction requirements. There is no requirement that each packaging item be reduced by 25 percent or that every producer achieve that reduction. Rather, Public Resources Code section 42057(a) applies to the PRO generally, requiring it to implement a plan that achieves the 25-percent reduction.

B-54: BSH Home Appliances Corporation (Alicia Cafferty)

Comment B-54-1

February 13, 2026

Via calrecycle.ca.gov

Csilla Richmond
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 “I” St., MS-24B, Sacramento, CA 95814

BSH Home Appliances Corporation Comments: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear Csilla Richmond:

Thank you for the opportunity to provide comments on the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. While we recognize that this 15-Day comment period is limited to the Department’s recent modifications, the revised language must necessarily be evaluated in the context of the regulation as a whole. The modifications alter how several provisions will operate in practice and, as a result, highlight implementation questions and ambiguities that directly affect compliance with related sections.

Our comments are offered to describe the foreseeable impacts of these revisions and to assist the Department in developing final regulations that are clear, consistent, and workable.

As a producer of durable goods, we must make packaging decisions with long-term consequences now, well before all certification programs and guidance are finalized. Because packaging design decisions must be finalized years in advance of market entry, regulatory ambiguity today directly determines whether producers will be able to comply tomorrow. In specific cases, the rule requires engineering decisions without corresponding engineering standards. We urge the Department to include a provision allowing producers to rely in good faith on any guidance or approved certification pathways in effect at the time packaging design decisions are made.

Compostability Criteria and Third Party Certification Infrastructure

The 15-Day revisions relating to compostability criteria create uncertainty regarding the applicability of Section 18980.3.3 to natural materials such as ISPM-15 heat-treated wood used in packaging applications. ISPM-15 heat treatment is a thermal

phytosanitary process that does not introduce additives, and the resulting material remains untreated solid wood.

As revised, the regulation does not clarify whether such natural wood materials are presumed compostable organic matter, whether ASTM compostability testing is required, or what documentation or evidentiary standard producers must maintain to substantiate compliance. We respectfully request clarification to ensure consistent implementation and to avoid unnecessary testing burdens for natural wood packaging components.

Furthermore, Public Resources Code §42357 condition compostability certification on the Department's approval of third-party certification entities, which do not yet exist. This creates a significant challenge for producers operating on multi-year product development timelines. We respectfully request that CalRecycle:
 Clarify the timeline for approving and publishing the list of third-party certification entities.
 Confirm how compliance will be evaluated in the interim, before an approved certification system is operational for the required one-year period.

De Minimis Component Criteria

The 15-Day revisions increase reliance on the de minimis provision as an important compliance pathway for packaging components. As revised, however, the regulation relies on qualitative criteria requiring producers to demonstrate that a component has "no effect" on recyclability, does not make recycling or composting more difficult, and enables the use of recyclable, compostable, reusable, or refillable packaging, without establishing objective standards for how these determinations are to be evaluated or documented.

In practice, packaging for large and durable goods like home appliances includes small but functionally necessary components that represent minimal weight. The absence of defined evidentiary standards, measurable thresholds, or safe-harbor examples creates significant uncertainty. It is unclear whether compliance will be assessed at the component level or the finished package level, or if these determinations could be retrospectively challenged during enforcement. Absent objective criteria, producers cannot determine in advance whether a component qualifies, creating risk that compliant design decisions could later be reinterpreted.

This reliance on subjective determinations makes it difficult to design packaging with the regulatory certainty needed for long-term planning. We respectfully request that CalRecycle provide objective guidance, illustrative examples, or measurable benchmarks to ensure the de minimis criteria can be applied consistently and predictably.

We appreciate the Department's continued engagement throughout this rulemaking process and respectfully request consideration of these comments. Providing clear,

prospective standards will allow producers to align packaging decisions with regulatory expectations while supporting consistent and efficient program implementation. We welcome continued dialogue as the regulations are finalized.

Respectfully,
Alicia Cafferty
Head of Government Relations
BSH Home Appliances Corporation

Background
BSH Home Appliances Corporation (BSH), headquartered in Irvine, California, produces and markets small and major home appliances that are known for their high-quality and superior innovation. BSH sells its Gaggenau, Thermador and Bosch branded products throughout North America, through distributors, independent appliance dealers, national and regional retailers, builders and large buying groups. BSH supports efforts to protect our environment and accepts a responsibility in building a sustainable future for all.

Response to B-54-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made in the 15-Day Changes.

B-55: CR&R Environmental (Noam Elroi)

Comment B-55-1

February 13, 2026

Ms. Karen Kayfetz
Branch Chief, CalRecycle Product Stewardship Branch
1001 I Street
Sacramento, CA 95814
Emailed to: packaging@calrecycle.ca.gov

Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations – Comments on Draft Regulation Changes Released January 29, 2026.

Dear Ms. Kayfetz,

On behalf of CR&R Environmental Services, I thank you for the opportunity to comment on CalRecycle's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) regulatory process. Below are comments on the proposed revisions to the Draft Regulations released January 29, 2026.

Founded in 1963, CR&R is a Southern California-based waste and recycling collection company, serving more than 3 million people and over 25,000 businesses in Orange,

Los Angeles, San Bernardino, Imperial, and Riverside counties. CR&R is contracted with approximately 55 local entities to provide waste and recycling services that support compliance with state laws. With over 2,000 employees, many of whom work under a collective bargaining agreement with Teamsters Local 396, CR&R has long been a leader in the development of climate-friendly, closed-loop waste collection and processing. CR&R owns and operate one of the largest Anaerobic Digestion facilities in North America, providing critical services for meeting organics diversion and short-lived climate pollutant reduction requirements of SB 1383 (Lara, 2016) and the waste stream circularity requirements of SB 54 (Allen, 2022).

We are pleased to see the amendments to Section 18980.2 on categorically excluded materials. Specifically, we appreciate the clarification that only packaging which cannot be made compliant with both SB 54 and mandatory Federal rules, regulations, or guidelines, may be categorically exempted. This change brings the scope of covered materials more in line with the original intent of the statute. However, this same type of clarification— that only conflicts with mandatory USDA and FDA requirements trigger exclusions— should be applied across section 18980.2 wherever mentions of legal conflict arise.

Further, clarification that repeat applications for exclusion do not automatically trigger removal from the covered materials list is a welcome fix to a potential loophole. This is an important limit on an already generous exclusion timeline.

Response to B-55-1

Comment rejected. CalRecycle cannot discern what change the commenter proposes. The commenter requests that the clarification that "only conflicts with mandatory USDA and FDA requirements trigger exclusions" be applied in section 18980.2 "wherever mentions of legal conflict arise." There are no other "mentions of legal conflict" in section 18980.2. If the commenter intended to refer to the exclusions listed in paragraphs (1) and (3) through (6) of subdivision (a), the recommendation is nonsensical because those paragraphs present statutory exclusions from the definition of "covered material" and do not concern "legal conflict."

Comment B-55-2

Although we appreciate the improvement made to the scope of covered materials, we are disappointed to see that the many critical issues for recycling service providers outlined in our October 2025 letter remain unaddressed. These are summarized briefly below, but can be found in full in our October 2025 letter.

§18980.1(a)(2)

Alternative collection could undermine local franchise systems, MRF financing, diversion tracking, and bond obligations unless approved by and run in coordination with relevant recycling service providers and local governments.

§18980.8(g)(4)
Unclear reimbursement timelines create financing difficulties; regulations should set firm deadlines so recycling service providers can responsibly plan debt and capital investments.

§18980.8(g)(6)
Non-optional, performance-based reimbursement conflicts with SB 54's mandate to fully reimburse costs and risks leaving jurisdictions unpaid for good-faith investments.

§18980.11(d)&(e)
CalRecycle—not the PRO—should clearly retain independent authority to approve exemption and extension applications based on real-world end market and sorting constraints.

§18980.13(b), §18980.13.1
Proposed penalties on recycling service providers and jurisdictions are excessive and misaligned with SB 54; enforcement should be graduated and focused on compliance assistance first.

CR&R has been a pioneer in circular economy waste collection and processing in California for decades and understands the role recycling service providers play in helping local governments and the PRO achieve the goals of SB 54. Again, on behalf of CR&R, I greatly appreciate your consideration of our comments.

Sincerely,
Alex Braicovich
Senior Vice President, Environmental Services
CR&R Environmental Service

Response to B-55-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

B-56: The Nunes Company, Inc. (John Rosans)

Comment B-56-1

February 13, 2025

Re: Comments on Proposed Regulations Implementing SB 54 (Packaging Producer Responsibility Act)

To CalRecycle:

We are writing on behalf of The Nunes Company, Inc., a private, family-owned, grower-shipper of conventional and organic vegetables that represents farmers growing in California, Arizona, and Nevada. Formed in 1976 and known for our Foxy® and Foxy Organic® brands, our company has a long-standing legacy in the Salinas Valley, offering a diverse range of conventional and organic fresh vegetables and strawberries. Among other innovations, our founders, Bob and Tom Nunes, pioneered the practice of film-wrapping lettuce in plastic for freshness.

Today, that practice remains vital to our industry, not just for freshness, but for food safety. We therefore appreciate the opportunity to comment on the January 29, 2026 draft regulations implementing SB 54. Our comments focus on the treatment of field-level and value-added food-contact packaging and the need for a regulatory pathway that recognizes packaging used to comply with federal and industry food-safety requirements.

I. Food Safety Regulations Require Packaging and Food Contact Materials That Prevent Contamination.

a. FSMA Produce Safety Rule Requirements

Under the Food Safety Modernization Act (FSMA), the Produce Safety Rule (21 CFR Part 112) establishes mandatory standards for growing, harvesting, packing, and holding produce. Key provisions include:

- **21 CFR §112.11**: Requires "appropriate measures to minimize the risk of serious adverse health consequences or death from the use of, or exposure to, covered produce, including those measures reasonably necessary to prevent the introduction of known or reasonably foreseeable hazards into covered produce, and to provide reasonable assurances that the produce is not adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act on account of such hazards."
- **21 CFR §112.116:** Food-packing material must be "adequate for its intended use", which includes being: (1) Cleanable or designed for single use; and (2) Unlikely to support growth or transfer of bacteria.

In field packed leafy greens operations, the plastic bag itself is a primary food contact surface. It prevents cross contamination from soil, harvest equipment, workers' hands, and transport containers. No commercially viable non plastic alternative currently meets FSMA's sanitation, durability, and microbial control requirements in field conditions.

b. California LGMA Standards

The California Leafy Greens Marketing Agreement (LGMA) (1) requires:

- All food contact surfaces, including harvest containers, liners, and packaging materials, to be designed, constructed, and maintained to prevent contamination.
- Packaging materials to be stored, handled, and used in a manner that prevents contamination.

These requirements apply directly to field packed leafy greens. Packaging is a core component of the contamination prevention system, not a discretionary marketing feature.

c. Buyer and Third Party Audit Requirements

Major retail and foodservice buyers require compliance with GFSI benchmarked schemes (2) and their own supplier standards. These programs require:

- Documented control of food contact packaging materials
- Demonstrated prevention of cross contamination
- Validation that packaging is fit for purpose and does not introduce microbial hazards

These requirements apply directly to field-packed leafy greens. Packaging is an essential food-contact surface that plays a critical role in preventing cross-contamination after harvest; it is not a discretionary marketing feature.

II. Plastic Packaging Is the Only Viable Material for Field-Packed Produce Under Current Food-Safety and Operational Requirements.

Field-packed produce – including leafy greens, broccoli, cauliflower, celery, and other high-moisture, high-respiration commodities – requires packaging that performs multiple critical functions simultaneously: helping protect the product from contamination, maintaining quality during rapid cooling, preventing moisture loss, and withstanding the physical demands of harvest and distribution. At present, only plastic films meet these combined functional and food-safety requirements in commercial field conditions. Alternative materials fail to provide the necessary microbial protection, durability, moisture control, and performance characteristics required under FSMA, LGMA, and GFSI-benchmarked buyer standards.

a. Functional Performance Requirements for Field-Packed Produce

Field-packed produce is harvested and packaged outdoors, often in dusty, wet, or variable environmental conditions. Packaging must therefore meet the following safety, operational, and functional requirements:

- Serve as a primary food-contact surface that prevents cross-contamination from soil, harvest equipment, workers' hands, and transport containers;
- Maintain structural integrity when wet, as leafy greens and brassicas release moisture continuously;
- Provide appropriate oxygen transmission rates (OTR) to prevent anaerobic conditions while slowing respiration and spoilage;
- Withstand vacuum cooling and hydrocooling, which impose rapid pressure changes and require packaging that does not collapse, tear, or deform;
- Protect against mechanical damage during harvest, stacking, transport, and retail handling;
- Maintain high humidity to prevent wilting while avoiding condensation that promotes microbial growth.

Plastic films are uniquely capable of meeting all of these requirements simultaneously. They provide predictable OTR, excellent moisture barrier properties, durability under wet conditions, compatibility with cooling systems, and sufficient strength and flexibility for field operations.

b. Alternative Materials Are Simply Not a Viable Option

Alternative packaging materials, like the ones discussed below, are simply not a viable option for field-packed produce.

1. Paper and Fiber-Based Packaging

Paper, molded fiber, and coated paper fail for one overriding reason: they cannot survive moisture. Field-packed produce releases water continuously, and paper absorbs it. Once wet, paper collapses, tears, sheds fibers, and becomes a microbial substrate. These failures make paper fundamentally incompatible with:

- FSMA's requirement that food-contact materials be "adequate for their intended use";
- LGMA's requirement that packaging prevent contamination; and
- Vacuum cooling, which destroys wet paper instantly.

Because paper cannot maintain structural integrity or sanitary conditions when exposed to moisture, it cannot be used for leafy greens, broccoli, cauliflower, or any high-moisture field-packed crop.

2. Compostable and Bioplastic Films

Compostable films fail for one core reason: they cannot deliver the moisture and oxygen-control performance required for fresh produce. These materials:

- Absorb or transmit moisture too quickly, causing wilting and microbial growth;
- Have inconsistent or too-low oxygen transmission rates, creating anaerobic conditions; and
- Become brittle at cold temperatures used in produce cooling.

These deficiencies directly conflict with FSMA and GFSI requirements to control microbial hazards and validate packaging performance. Compostable films simply cannot maintain the environmental conditions needed to keep produce safe.

3. Laminates, Coated Papers, and Waxed Materials

Likewise, "hybrid" materials fail for one central reason: they break down when exposed to moisture and physical stress.
In field conditions, these materials:

- Delaminate, exposing raw paper fibers;
- Tear at seams or folds; and
- Lose integrity during vacuum cooling.

Once compromised, these materials no longer protect the product from contamination. Moreover, they also appear to remain "Covered Materials" under the current draft of SB 54, offering no regulatory benefit while still failing operationally.

III. Plastic Packaging Is Likewise the Only Viable Material for Value-Added Processed Leafy Greens and Other Vegetables

Processed produce – including chopped Romaine, spring mix, baby spinach, broccoli and cauliflower florets, etc. – requires packaging that performs far more demanding food-safety and functional roles than field-packed commodities. Once produce is cut, its natural protective barriers are removed, respiration rates increase sharply, and susceptibility to microbial growth rises. Under these conditions, plastic packaging is the only material capable of maintaining product safety, quality, and regulatory compliance.

a. Regulatory Requirements Under 21 CFR Part 117

Processors subject to the Preventive Controls Rule must ensure that packaging:

- Does not introduce hazards;
- Maintains product safety throughout shelf life;

- Controls environmental parameters necessary to prevent microbial growth, including OTR and moisture; and
- Is durable, sanitary, and appropriate for its intended use.

These provisions require processors to validate and verify that packaging consistently maintains safe conditions for cut produce throughout its intended shelf life.

b. Processed Produce Therefore Requires Plastic Packaging

Because cut vegetables demand precise control of oxygen transmission, moisture retention, and package integrity under cold, wet, and high-pressure conditions, only engineered plastic films can be validated to meet these regulatory requirements. Plastic is the only material that withstands vacuum sealing, maintains the modified atmosphere needed to prevent microbial growth, protects cut surfaces from contamination, and survives distribution without routine failure. The alternative materials discussed above simply cannot deliver these validated safety and performance functions.

(1) The LGMA is science-based, voluntary-entry program created in 2007 to ensure the safety of leafy greens. LGMA members produce approximately 90% of the leafy greens grown in the United States, and members are subjected to mandatory government audits provided by USDA-certified, government inspectors. LGMA members are audited multiple times throughout the season and must achieve 100 percent compliance with the LGMA food safety practices
(2) The GFSI (Global Food Safety Initiative) is an industry-driven organization that benchmarks and recognizes various third-party food safety certification programs (often called "schemes" or "standards"). These programs are not created by GFSI itself but are developed and owned by independent CPOs (Certification Programme Owners). Major retailers and foodservice companies often require suppliers to hold certification to one of these GFSI-recognized schemes as part of their supplier approval processes.

> **Response to B-56-1**
>
> Comment rejected. No response to this comment is necessary because it does not propose a change to the proposed regulations or raise an objection related to the rulemaking process. To the extent subsequent portions of the commenter's submission do propose changes or raise objections, CalRecycle has responded to them separately.

Comment B-56-2

IV. The Proposed Amendments Exceed CalRecycle's Statutory Authority and Misinterpret Federal Food-Safety Law

The Legislature placed clear limits on CalRecycle's authority when it enacted SB 54, and the proposed amendments to Section 18980.2 exceed those limits. Under Government Code § 11349(d), a regulation is invalid if it exceeds the scope of the enabling statute. SB 54 further requires that any implementing regulations be

"reasonable and necessary" to carry out the statute (PRC § 41821.5(c)). The proposed amendments – particularly the introduction of a new "mandatory" qualifier – are neither reasonable nor necessary to implement the statutory exclusion for food and agricultural commodity packaging.

The statute itself makes the Legislature's intent unmistakable. PRC § 42060(b)(1) directs CalRecycle to "ensure that any regulations adopted pursuant to this chapter consider guidelines and do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture." PRC § 42060(b)(2) goes further, prohibiting CalRecycle from imposing "any requirement . . . in direct conflict with a federal law or regulation, including . . . the federal FDA Food Safety Modernization Act," and expressly barring the Department or a PRO from imposing "a postconsumer recycled content requirement for covered material for fresh produce."

The proposed amendments conflict with these statutory protections. By conditioning the categorical exclusion on packaging that is "mandatory" under federal law, the draft regulation imposes a requirement that has no basis in FDA's regulatory framework. FDA does not mandate specific packaging materials or designs for produce. Instead, FDA establishes performance-based obligations: packaging must protect food from contamination and must not introduce contaminants. The only "mandatory" aspect of FDA regulation is the duty to ensure food-contact materials are safe – not the use of particular materials. Because FDA does not issue material-specific mandates, CalRecycle's new "mandatory" qualifier effectively nullifies the exclusion the Legislature created.

The draft regulation also fails to provide clear standards for what information companies must submit or how CalRecycle will evaluate that information. Regulated entities cannot determine what constitutes adequate documentation, what threshold must be met, or how CalRecycle will interpret "reasonably possible." This lack of clarity violates California's rulemaking standards, which require regulations to be clear, consistent, and provide fair notice of what is required (Gov. Code § 11349(c)–(d)).

The Legislature created the exclusion in PRC § 42060 precisely because federal food-safety requirements can conflict with SB 54's packaging restrictions. The exclusion was intended to be functional and accessible – not so narrow that it becomes unusable. The proposed amendments undermine that purpose by creating a standard that no food-contact packaging can realistically satisfy.

V. SB 54 Must Provide a Regulatory Pathway That Accounts for the Unique Food-Safety and Operational Realities of Agricultural Packaging

To function as the Legislature intended, SB 54 must include a clear regulatory pathway for packaging that is legally required for food safety and for which no viable alternative exists. Fresh-produce packaging is selected to meet federal and state food-safety obligations – not marketing preferences or shelf appeal – and growers and processors

cannot substitute away from materials that are necessary to prevent contamination, maintain product integrity, and comply with FSMA, LGMA, and other audit requirements.

The proposed amendments to Section 18980.2 effectively eliminate the statutory exclusion in PRC § 42060 by introducing a "mandatory" qualifier that does not exist in federal law and by adopting an unduly narrow view of what is "reasonably possible." Without a functional categorical exclusion, SB 54 will impose fees on packaging that the agricultural sector is legally obligated to use. For an industry that already operates on narrow margins, these added costs will inevitably flow downstream to retailers and consumers -- an outcome that would disproportionately burden the disadvantaged and low-income communities the Legislature identified as needing protection.

In addition to these economic impacts, the proposed amendments would create unintended food-safety and traceability risks. By effectively eliminating the categorical exclusion for packaging required under federal law, the regulation disincentivizes the use of wrapped, protected product and instead encourages the sale of "naked," unbranded produce. This outcome is inconsistent with FSMA's requirements for controlling food-contact surfaces and directly undermines the enhanced traceability obligations established under FSMA 204, which depend on labeled, unit-level identification to support rapid traceback during outbreaks.

A workable regulatory exclusion therefore is essential to avoid undermining food safety, disrupting the fresh produce supply chain, and increasing costs for the communities SB 54 was designed to support. We respectfully urge CalRecycle to revise the final regulation to restore a clear, functional categorical exclusion that reflects federal food-safety requirements and the operational realities of agricultural production.

Thank you for considering these comments.
John Rosans, Legal Counsel
Jacob Odello, Director of Food & Industrial Safety

Response to B-56-2

Comment rejected. Regarding the effect of the term "mandatory" and the assertion that the revisions to section 18980.2(a)(2) render it no longer a "functional categorical exclusion," CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. The commenter expressly concedes that the FDA establishes "obligations" and a "duty to ensure food-contact materials are safe," that federal law imposes "requirements for controlling food-contact surfaces," and that federal law governs what packaging "the agricultural sector is legally obligated to use." It is untrue, therefore, that the federal framework does not impose "mandatory" restrictions, and nothing in section 18980.2(a)(2) requires there to be federal requirements dictating "specific packaging materials or designs" for the requirements to justify exclusion. Regarding the clarity standard and "adequate documentation," CalRecycle rejects this comment for the reasons stated in response to comment O-31-5 and

because subparagraph (A) through (C) make clear what notices must include and explain the related procedures. Notices must identify the conflict between the Act and federal requirements, describe the packaging at issue, and explain the contention that it is not reasonably possible to satisfy all such requirements, an explanation that is subject to the objective criteria set forth in subparagraph (B). Subparagraph (C) makes clear that, as long as the notice contains those elements, CalRecycle may only reject it if CalRecycle identifies packaging that might serve as an alternative. In such instances, the submitter may resubmit the notice to demonstrate otherwise.

The commenter also objects to the possibility that "SB 54 will impose fees on packaging that the agricultural sector is legally obligated to use." To the extent that the commenter did not intend to refer to "penalties" instead of "fees," that objection is without merit. There is no logical reason why the mere obligation to use certain packaging under any other law, without there being any conflict with the Act, would exclude it from being "covered material" under the Act. If the commenter intended to refer to penalties for using packaging that the "agricultural sector is legally obligated to use" under federal law, section 18980.2(a)(2) unambiguously establishes a pathway to avoid such penalties. Regarding the commenter's reliance on economic impacts, food-safety, and traceability, those concerns are not relevant under section 18980.2(a)(2) except to the extent they can demonstrate that packaging that satisfies the Act's requirements cannot be used without violating federal requirements. If known alternatives can be used to satisfy the Act and federal requirements but are merely disfavored due to significant challenges or health and safety reasons, exemptions under the standards established in section 18980.2.4 provide the appropriate remedy.

B-57: Scully Packing Company, LLC (Hanna Scully)

Comment B-57-1

SB 54 Regulations Rulemaking File
[Submitted via CalRecycle’s 15-day comment portal]

Re: Comments on SB 54 Final Draft Permanent Regulations (Jan. 29, 2026) – 15-Day Comment Period (Jan. 29–Feb. 13, 2026)

To CalRecycle:

On behalf of the Scully Packing Company, LLC., we submit these comments on CalRecycle's Jan. 29, 2026 final permanent draft regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) during the 15-day comment period (Jan. 29–Feb. 13, 2026).

Scully Packing Company is a grower, packer, and shipper of California Pears. We produce approximately 40% of all California Bartletts and represent 15 other farming families. We strongly support California's goals to reduce waste and advance a circular economy. However, we are deeply concerned that revisions to Article 2 – Categorically Excluded Materials (Section 18980.2) make categorical exclusions functionally unattainable for many fresh-produce applications and fail to reasonably accommodate unavoidable food safety, food-contact, and operational constraints.

1) Section 18980.2 revisions make categorical exclusions nearly impossible to obtain
The Jan. 29 draft significantly departs from earlier versions by raising the burden of proof for categorical exclusions—particularly through changes that increase what producers must demonstrate regarding "mandatory" requirements and what is "reasonably possible." As written, the regulation effectively requires fresh produce companies to compile extensive legal and technical documentation to prove that no feasible packaging alternative can meet FSMA, FDA food-contact expectations, and applicable state requirements while also maintaining the necessary performance attributes that protect public health and prevent spoilage.

2) Pear packaging is driven by food safety, shelf life, and damage prevention—changing materials can increase food waste
Fresh pears are highly susceptible to bruising, compression damage, and quality loss if packaging does not maintain appropriate protection and performance throughout harvest, cooling, storage, transportation, and retail handling. Packaging for pears is engineered to support critical functions, including:
• Protecting fruit from physical damage during handling and transit
• Maintaining appropriate airflow and temperature performance for cold-chain movement
• Managing moisture and reducing contamination risks
• Preserving shelf life and quality to reduce food waste
Packaging changes that compromise package integrity, shelf life, or contamination controls can increase food waste, which undermines California's climate and environmental goals.

3) The draft eliminates reasonable accommodation for real-world compliance pathways
We are particularly concerned the draft no longer reasonably accommodates compliance pathways that are commonly used to safely transition packaging, including the continued use of liners, coatings, or closures where necessary to meet food safety and food-contact performance requirements. The draft also appears to set an "all-or-nothing" standard for redesign that does not reflect how fresh produce packaging innovation occurs in practice—incremental changes validated for food safety and performance over time.

4) Distributor-as-"producer" treatment and penalties create significant legal and operational risk

We share concerns that the draft's approach can treat entities as "producers" simply for selling products into California, expanding compliance exposure in ways that are difficult to manage across complex produce supply chains.

We are also concerned about the scale of potential penalties and compliance risk described in the SB 54 regulatory framework, including exposure to significant civil penalties and packaging sale restrictions for noncompliance.

Requested revisions:
To support successful implementation of SB 54 while protecting public health and food system efficiency, Scully Packing Company & California pear growers respectfully request CalRecycle:
1. Restore a clear, workable categorical exclusion pathway that is realistically achievable for fresh-produce packaging where food safety and food-contact requirements limit alternatives.
2. Recognize established federal food safety and food-contact compliance frameworks as the appropriate benchmark for evaluating whether alternatives are feasible for fresh produce packaging.
3. Allow reasonable use of liners, coatings, and closures where needed to maintain food safety and shelf-life performance while alternatives are developed and validated.
4. Clarify supply-chain roles and obligations to avoid inappropriate producer assignment for downstream entities that do not control packaging design or material choices.

California pear growers are committed to waste reduction and innovation. We respectfully urge CalRecycle to revise the final regulations to ensure SB 54 is implemented in a way that protects food safety, avoids increases in food waste, and remains workable for the fresh produce supply chain.

Thank you for considering our comments.
Scully Packing Company, LLC.
3275 Stone Dr.
Finley CA 95435
707-263-7327

Response to B-57-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which encompasses the objections and recommendations made in this comment that are relevant to the changes made in section 18980.2(a)(2). Regarding the fourth requested revision, no response is necessary because none of the revisions made to the 45-Day Changes concern "producer assignment." Nothing in those revisions relates to the commenter's allegation that "the draft's approach can treat entities as 'producers' simply for selling products into California." Whether an entity is a "producer" under Public Resources Code section 42041(w) is addressed in various provisions in section 18980.1 and 18980.1.1, neither of which has been revised.

B-58: Driscoll's (Jenet DeCosta)

Comment B-58-1

February 13, 2026

Submitted Electronically via: https://calrecycle.commentinput.com/?id=3ikJbFpZN

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: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period

Dear Ms. Richmond,

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of Driscoll's Inc., a shipper of fresh berries headquartered in Watsonville, California.

Fresh berries are fragile, delicate, and packed by hand in the field. Our packaging must be able to support our product and withstand temperature and moisture extremes throughout the supply chain which includes field, cooling, transport and retail stores. Given these requirements, our packaging decisions are driven first by food safety requirements including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. Additionally, our packaging serves to optimize the supply chain to prevent food waste and greenhouse gas emissions. While we are consistently testing and piloting new package designs and material types, our primary package today is a PET thermoform clamshell, selected for its food-safety performance, recyclability, and ability to protect delicate fruit and minimize food waste.

The revised language in Section 18980.2 (Categorically Excluded Materials) raises significant implementation concerns. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Packaging is necessary to maintain integrity throughout harvesting, cooling, transportation and retail handling. Our packaging is carefully engineered to:

- Protect fragile produce from physical damage during transit and handling

- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality by managing the respective respiration rates of each of the berries

As drafted, the regulation requires producers to prove that "no alternative packaging complies with FSMA, FDA food-contact requirements and California law."

The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers. Driscoll's uses directional life cycle assessments (LCAs) to assess different packaging material types and their respective environmental impacts, specifically pertaining to greenhouse gas emissions and water usage. This work has informed prior investments in recycle ready clamshell design, material reductions, and efforts to make PET clamshells recyclable in practice and at scale well in advance of SB 54's implementation.

For consumers, access to fresh berries is an important part of a healthy diet, and effective packaging is critical to preventing food waste and ensuring that fresh produce remains safe, affordable, and available. Packaging innovation must consider the primary package (what the consumer takes home with them), the secondary package (packaging to consolidate the primary packages), as well as the tertiary package (packaging for transportation and delivery). The packaging system must work together, at scale, within real-world food safety, operational and supply-chain constraints to provide safe, delicious, healthy and affordable fresh fruits and vegetables to Californians.
I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Thank you for considering these comments.

Sincerely,
Jenét DeCosta, Sr Director Public Affairs
Driscoll’s

Response to B-58-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-59: Ocean Mist Fams (Chris Drew)

Comment B-59-1

February 11, 2026

To CalRecycle:

I am submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of my company, Ocean Mist Farms, a grower, packer and shipper of fresh vegetables operating in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, produce packaging serves other critical functions for fresh vegetables, including optimizing the supply chain to prevent food waste and ensuring the delivery of the highest quality of fresh vegetables to Californians. Packaging is necessary to maintain integrity throughout harvesting, cooling, transportation, retail handling and ultimately into consumers' homes. Fresh produce packaging is highly technical and carefully engineered to:

- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands on the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:

- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate bjectives.
As drafted, the regulation requires producers to prove that:

- No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
- Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
- A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination risk, compromise package integrity, shorten shelf life or increase food waste.

Without a viable categorical exclusion, SB 54 would impose:

- Unrealistic recycling and recyclability mandates
- Permanent caps on single-use plastic packaging with no accommodation for business growth
- Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

I respectfully urge CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.
Thank you for considering these comments.
Sincerely,

Chris Drew
President & CEO
Ocean Mist Farms

Response to B-59-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

B-60: Taylor Fresh Foods

Comment B-60-1

To CalRecycle:

Thank you for the opportunity to provide comments. I am submitting comments on the February 13, 2026, final draft “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act” regulation on behalf of my company, Taylor Fresh Foods, LLC, known as Taylor Farms, a large grower and producer of leafy greens, vegetables, and healthy fresh food headquartered in Salinas, California.

As the country’s largest grower and processor of leafy greens and vegetables, ensuring Americans have access to our safe, healthy foods has always been our highest priority. The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. First, due to the need to meet stringent safety requirements for public health, fresh produce needs to be treated similar to other FDA-regulated products, such as drugs and medical devices to ensure public safety. Similar to drugs and medical devices, fresh food packaging must meet federal standards to protect public health – but these standards are not “mandatory” as that term is used in the proposed revisions. We urge you to delete that word.

Importantly, the word is not required by statute. The word "mandatory" appears nowhere in the statutory text of PRC § 42060(b)(1), (2) or (d) regarding the categorical exclusion for packaging subject to federal-state conflicts. The Legislature did not limit the exclusion to conflicts with "mandatory" federal requirements. By adding this qualifier, the Department has impermissibly narrowed the statutory exclusion and created an interpretation inconsistent with both the text of SB 54 and the realities of federal food safety regulation. In addition to this, the current ambiguous and expansive language in Section 18980.2.4 (Exemptions for Certain Covered Materials) creates an unfair administrative and financial burden on producers. Below, I describe in further detail these issues with the proposed revisions that, if adopted, will have unintended consequences that negatively impact product safety, consumer access to healthy foods, and the environment. It is also important to emphasize that the regulation likely falls afoul of several key constitutional provisions, including the Commerce Clause and the Due Process Clause.

Response to B-60-1

Comment rejected. Regarding the portions of this comment specifically directed at section 18980.2(a)(2), CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises with respect to the changes embodied in the 15-Day Changes,. CalRecycle also rejects this comment because it is self-contradictory: It states that food "must meet federal standards" but contends that "these standards are not 'mandatory' as that term is used in the proposed revisions." That objection is

spurious because a standard that food "must meet" is, by definition, a "mandatory" standard, not a voluntary one. The commenter offers no contextual support for the assertion that section 18980.2(a)(2) uses "mandatory" to have some other meaning. Regarding section 18980.2.4, no response is necessary because that section has not been revised in the 15-Day Changes. To the extent the commenter intended to assert that exemptions pursuant to section 18980.2.4 are not adequate to offset the commenter's concerns over section 18980.2(a)(2), however, CalRecycle rejects that assertion for the reasons provided in response to comments B-3-1 , B-50-1, and O-33-6.

Comment B-60-2

Fresh Produce, A Perishable, Healthy Product Critical To Health Should Be Treated Similarly to Other FDA-Regulated Products

Section 18980.2.2, entitled “Categorically Excluded Materials,” excludes *all* drugs and medical devices regulated by FDA. See Section 18980.2.2(a)(4) (excluding “Packaging used for ‘devices’” and referencing the Federal Food, Drug, and Cosmetic Act’s definition for all devices”); Section 18980.2.2(a)(5) (excluding “Packaging used for ‘drugs’” and referencing the Federal Food, Drug, and Cosmetic Act’s definition for all drugs and prescription drugs); Section 18980.2.2(a)(6) (excluding packaging for “medical products” and referencing over-the-counter drugs, except sunscreens.). These drugs and medical devices are categorically exempted regardless of whether any mandated packaging requirements exist in the Federal Food, Drug, and Cosmetic Act, regardless of sterility requirements, and regardless of classification of risk of specific products, in recognition of the complex FDA regulatory scheme that helps ensure the safety of products. For similar reasons, fresh produce should receive the same treatment and also be categorically exempted. For example, pharmaceutical and medical device manufacturers conduct studies on packaging materials to ensure integrity and to ensure that the packaging materials do not negatively impact the safety and effectiveness of the product to meet FDA requirements. Similarly, for fresh produce, studies are conducted to identify complex packaging materials that can meet a range of standards to ensure safety and meet regulatory requirements

Response to B-60-2

Comment rejected. This comment appears to concern packaging described in section 18980.2(a)(4) through (6) (misstated as 18980.2.2(a)(4) through (6), not section 18980.2(a)(2) and argues that packaging for "fresh produce" should be treated as categorically excluded in the same manner as that packaging. Because the comment does not concern any revisions made to the 45-Day Changes, no response is required. However, to the extent the commenter intended to argue that section 18980.2(a)(2) should mirror paragraphs (4) through (6) of section 18980.2(a), CalRecycle rejects the comment for the reasons provided in response to comment B-3-1 and because those paragraphs concern express statutory exclusions in Public Resources Code section 42041(e)(2) from the definition of "covered material." While CalRecycle interprets

42060(b) as authorizing CalRecycle to deem certain packaging not "covered material," the obvious difference between that provision and the exclusions prescribed in section 42041(e)(2) requires different interpretations. CalRecycle has appropriately given section 42060(b) a different effect by not considering it self-executing or subject to the sole discretion of regulated entities.

Comment B-60-3

The Proposed Addition of the Word "Mandatory" Throughout Section 18980.2 Renders the Exclusion Too Narrow

Fresh cut produce is incredibly safe because of the rigorous protocols and controls adopted by industry to meet the stringent federal safety standards. Without the use of specific, complex packaging for fresh cut produce, risks of cross contamination and food borne illness would significantly increase.

We are concerned that the addition of the word "mandatory" throughout Section 18980.2 will have inadvertent and potentially catastrophic impacts on food safety and could significantly increase the risk of cross contamination and food borne illness and endanger public health. In reference to Section 18980.2(a)(2), as currently written, there is a risk that the proposed regulation may be interpreted to mean that federal legislation does not "mandate"1 specific packaging material for fresh produce, when in reality, when viewed holistically, there is a de facto requirement for the use of certain packaging. Under the Federal Food, Drug, and Cosmetic Act, fresh-cut produce (peeled, sliced, chopped, shredded) is no longer a "Raw Agricultural Commodity", it is legally classified as "Processed Food." As such it is subject to 21 CFR Part 110, good manufacturing practice requirements for food (similar to how drugs and medical devices are subject to good manufacturing practice requirements that include packaging), requiring strict biological and manufacturing controls, where the processor is legally responsible for preventing the food from becoming "adulterated" (e.g., unsafe). Materials currently used to package fresh produce, such as modified atmosphere packaging (MAP), are critical to maintaining the safety of fresh product by preventing microbial growth. MAP creates a controlled environment with precise transmission rates to prohibit microbial growth and oxidation. For instance, fresh-cut produce must be packaged in materials that allow oxygen levels to drop below 1% (creating anaerobic conditions.). The proposed rules could prevent the use of this important MAP technology thereby creating a conflict with standards needed to protect public health.

Moreover, the addition of the word "mandatory" appears nowhere in the statutory text of PRC § 42060(b)(1), (2) or (d) regarding the categorical exclusion for packaging subject to federal-state conflicts. The Legislature did not limit the exclusion to conflicts with "mandatory" federal requirements. By adding this qualifier, the Department has impermissibly narrowed the statutory exclusion and created an interpretation inconsistent with both the text of SB 54 and the realities of federal food safety regulation.

Without the revisions, it may be legally impossible to achieve compliance and impact the supply of fresh produce to consumers.

Response to B-60-3

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1 regarding the word "mandatory." Also, this commenter expressly acknowledges that federal law imposes mandatory restrictions: It describes federal requirements as "good manufacturing practice requirements," "requiring strict biological and manufacturing controls," making "the processor legally responsible for preventing food from becoming 'adulterated.'"

Comment B-60-4

Unreasonable Administrative and Financial Burdens with the Proposed Changes And Unintended Consequence

Beyond legal conflict, the current ambiguous and expansive language in Section 18980.2.4 (Exemptions for Certain Covered Materials) creates an unfair administrative and financial burden on producers to prove the unique challenges we face to comply with the Act by assessing what could be hundreds of alternative packaging formulations and potentially conflicting laws. Thus, without being exhaustive, we would like tonarrate just a few of the additional challenges we face due to this regulation and our ability to supply millions of Californian and American consumers with healthy, fresh food.

• **Functionality & Food Waste**
Our products would physically not exist without the use of functional packaging.
o As noted above, our packaging is what's known as modified atmosphere packaging (MAP) and it's more technologically advanced than is commonly understood.
o MAP has allowed our industry to achieve a remarkable 16-day shelf life in our primary product line of chopped salad kits and allowed us to use product ingredient formulations that would not otherwise exist; a shelf life necessity when shipping healthy fresh produce into regions where these products cannot physically grow to meet consumer demand/needs and would disproportionately affect food desert communities in California and the broader US.
o ReFED, the nation's leading authority on food waste prevention, has found that active and intelligent packaging design is the 17th most impactful method for food waste prevention, preventing an estimated 425k tons of food waste (558k MT CO_2e) annually.
• **Alternative Packaging**
Today, there are no viable packaging alternatives for meeting our food safety, shelf life, quality, and functionality requirements.
o Taylor Farms is one of the most progressive fresh food producers in North America, if not the world, with our top priorities being safety, followed by product and packaging innovation, all toget more consumers eating healthy fresh food. We have a dedicated packaging R&D team and work very closely with our manufacturers on the most optimal

packaging formulations for our products, which includes exploration in recyclability, fiber, and compostables.
o In all instances that we have explored, paper or fiber-based alternatives must have a liner or coating application to pack fresh cut produce due to MAP functionality requirements. Findings show that liner and/or coating technology today typically has an increased costs (5-20% premium) and/or cannot technologically create a modified atmosphere without hindering recyclability and compostability. To compound this, the amount of paper/fiber needed to meet the structural integrity of today's packaging options requires significantly more material, resulting in a component that is roughly 20-40% heavier than today's packaging, thereby affecting machine throughput, transportation, and increasing sourcing cost and EPR fees.
o We have been testing compostable alternatives to film and thermoform for over 4 years. However, due to CA AB 1201 (California Compostable Packaging Labeling Law), these potentially viable compostable alternatives (although they too would have significant functionality detriments), would be null and void, as these options wouldn't meet the National Organic Program (NOP) listing requirement that becomes enforceable July 2027.
o The requirements set forth in Section 189080.2.4 create an unreasonable administrative and financial burden on producers to demonstrate and justify that alternative packaging cannot lawfully, financially, and technologically meet requirements SB54.
• **Cost**
The financial burdens of these regulations are substantial and cannot be absorbed by the supply chain.
o Due to EPR fee structure, this has increased our packaging cost by 10-20% and will most likely result in a 5-10% finished good markup.
o We estimate that a complete restructuring of our packaging would increase unit costs by a minimum of 12% and increase transportation costs by an additional 2-5% per unit, primarily due to loss of shelf life and the increased need for hauling frequency. This would also mean a significant increase in transportation miles resulting in an increase of emissions, an objective counter to this regulation.
o This legislation has no stated expiration date, and we have already experienced high volatility of material fees. In Oregon, in just one year, material fees fluctuated 18-100%. This level of volatility is extremely detrimental to long-term investments in packaging procurement, R&D, machinery, etc.
o When compared to Canada, US fees across our three most prominent material categories (PE film, PET Thermoform, and Plastic film laminate) were on average 33% higher.

Response to B-60-4

Comment rejected. This comment provides background regarding challenges facing food and agricultural packaging but does not address section 18980.2(a)(2) (the only arguably relevant provision that has been revised in the 15-Day Changes). To the extent the commenter intended its discussion of financial burdens to concern the effects of section 18980.2(a)(2), those concerns, by themselves, cannot justify exclusion of packaging under section

18980.2(a)(2). That provision concerns only conflicts with federal packaging requirements. Instead, section 18980.2.4 provides relevant exemptions; that section has not been revised in the 15-Day Changes. To the extent this comment was intended to relate to section 18980.2(a)(2) generally, CalRecycle rejects it for the reasons reasons stated in responses to comment B-3-1 (submitted in response to the 15-Day Changes), and comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes), regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not further revising the proposed regulation, including with respect to the availability of exemptions under section 18980.2.4.

Comment B-60-5
The Rule As Currently Drafted May Be Unconstitutional

If challenged in court, the current form of the regulation could be struck down by the courts on a host of legal and constitutional bases, particularly as it relates to fresh-cut produce. The constitutional deficiencies include the following examples. First, as indicated above, the regulation would be preempted by federal law. It would be nearly impossible for distributors of fresh-cut produce to simultaneously comply with the California regulation and the FDA's food safety regulations governing fresh-cut produce. Accordingly, federal law would prevail. Second, the regulation's arbitrary burdens and fees threaten the viability of interstate supply chains and unreasonably interfere with interstate commerce, in violation of the Dormant Commerce Clause. Third, the regulation—which, among other things, eschews appropriate notice and hearing requirements—violates the Due Process Clause. As a result of these and other legal deficiencies, the regulations would be struck down by reviewing courts in a manner similar to court's that have enjoined similar state-level regulations. See National Association of Wholesaler-Distributors v. Feldon, 3:25-cv-01334-SB (D. Or. Feb. 6, 2026).

We urge the Department to substantially revise proposed § 18980.2(a)(2), reverting to the August 22, 2025 draft regulatory text as a baseline and limiting any amendments to clarifications that enhance procedural transparency, without altering the scope, intent, or accessibility of the categorical exclusion or creating new barriers for agricultural producers subject to federal food safety or other requirements seeking to demonstrate federal-state regulatory conflicts.

Should you have any questions about the comments contained in this letter, please contact Wyatt Maysey, Director of Sustainability, at wmaysey@taylorfarms.com.

Thank you for considering these comments.

Sincerely,
Bruce Taylor
Chairman and CEO
Taylor Fresh Foods

Salinas, Calif

1 As noted above, the FD&C Act also does not explicitly mandate the exact packaging used for many pharmaceuticals and medical devices, but these products are categorically exempted.

Response to B-60-5

Comment rejected. The commenter asserts that the regulation "would be preempted by federal law" but points to the exact outcome that section 18980.2(a)(2) prevents: rendering it "impossible for distributors . . . to simultaneously comply with the California regulation and the FDA's food safety regulations governing fresh-cut produce." Second, the commenter points to "the regulation's arbitrary burdens and fees," but the burdens are not arbitrary (they require entities to justify their claims they are not subject to the Act) and the Act, not section 18980.2(a)(2), imposes "fees." The commenter also fails to explain how section 18980.2(a)(2) would violate the Dormant Commerce Clause in a way that would be fixed by the proposed change (reversion to the 45-Day Changes version). In either version, packaging would be subject to CalRecycle's ultimate determination of whether it is reasonably possible to comply with the Act and federal requirements. Third, the commenter asserts that the regulation "eschews appropriate notice and hearing requirements." That is untrue; nothing in section 18980.2(a)(2) implies that CalRecycle can impose penalties for violating the Act without a notice and hearing. Regarding the final sentence of this comment, that sentence summarizes the commenter's comments and states its overall recommendation. CalRecycle has responded to those comments separately and rejects the commenter's overall recommendation as described in those responses and in response to comment B-3-1.

B-61: EMERALD PACKAGING (Kevin Kelly)

Comment B-61-1

Dear Csilla Richmond –

I submitted comments on the January proposed SB54 regulations as required by February 13. It was my first time submitting comments on anything. In doing so, thanks to a bit of nerves, I left out a sentence contained in my original draft. In the attached letter, its italicized in paragraph 3.

Likely CalRecycle takes a dim view of changes to a letter after the due date. But as with all things, if you don’t ask, you won’t know. So here’s my letter with the italicized sentence. The letter sort of reads weird without it, but that’s on me. Still can’t hurt to ask.

Thanks for your consideration however it falls.

Best wishes,

Kevin Kelly

Kevin Kelly
Chief Executive Officer
kevin@empack.com
EMERALD PACKAGING
Main: +1 (510) 429-5700
empack.com

Response to B-61-1

Comment rejected. CalRecycle rejects comments B-61-1 through B-61-5 as a group for the reasons provided in response to comment B-50-1, which is substantively identical to the group of comments.

Comment B-61-2

February 13, 2026

Submitted Electronically via: https://calrecycle.commentinput.com/?id=3ikJbFpZN

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: SB 54 Plastic Pollution and Packaging Producer Responsibility Act Permanent Regulations 15- Day Comment Period

Dear Ms. Richmond:

Emerald Packaging thanks you for the opportunity to provide comments to CalRecycle on the proposed Senate Bill SB 54 (Allen, 2022) ("SB 54" or the "Act") Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026 ("Draft" or "Draft Regulations"). Emerald is the largest manufacturer of flexible packaging for produce in the country, comprising around 98% of our revenue. We're a family-owned company founded in 1963 based in Union City, California, where we employ 265 people who earn a living wage, on average over $40/hour.

More importantly, we're one of the leaders in sustainability in the flexible packaging industry. We were one of several California flexibles companies that proposed creating a recycling system for our packaging in 2000. Back then, small groups like ours had to get the support of the American Chemistry Council to introduce any legislation impacting plastics. They summarily killed it. As early as 2002 we teamed with Walmart and used compostable corn-based films for their fresh-cut spinach packaging. We rolled out food grade 30% post-consumer recycled resin packaging in 2024. Today we run over one million pounds of PCR annually in romaine, lettuce, and cauliflower bags, amongst other commodities. For the last two years we've been working on a path to commercialize paper for produce, a project that requires considerable research and expense. Finally, we collaborate extensively with the Western Growers Association on extended producer responsibility issues, our customer's main trade association.

Response to B-61-2

Comment rejected. CalRecycle rejects comments B-61-1 through B-61-5 as a group for the reasons provided in response to comment B-50-1, which is substantively identical to the group of comments.

Comment B-61-3

Our company supported the August 22, 2025, SB 54 Draft Regulations as the language offered a viable and clear framework for compliance for fresh produce packaging with the ability to apply for a categorical exclusion, as permitted by Public Resource Code section 42060(a)(3)-(4) and as required by section 42060(b), in written comments submitted on October 7, 2025 with the Western Growers Association. While I understand the Department's challenges in creating regulations while buffeted by political pressures on all sides, the revised language in Section 18980.2 Categorically Excluded Materials is unworkable for the produce industry. The January 29, 2026, revisions introduce requirements that are effectively impossible for fresh produce packaging to satisfy. They eliminate the workable framework CalRecycle proposed in August 2025 and replace it with an exclusion pathway that is unattainable, raising concerns regarding the ability of my customers and myself to comply. *Sadly, it seems to have been forgotten that in the negotiations around SB54's language, the Legislature and stakeholders provided an exclusion for packaging used for fresh produce, meat, poultry, and eggs where compliance with the Act would conflict with federal food safety rules, regulations, and guidelines.*

Instead of the current language, we instead propose wording that even Senator Allen, author of SB54, may like while accommodating the needs of food packaging. We support modifying the categorical exclusion language in Article 2, Section 18980.2, which is firmly grounded in existing statutory authority and limited to circumstances where no reasonably possible compliant alternative exists. To ensure that the language is both feasible to meet and narrowly focused on the needs of food packaging that must comply with applicable federal state laws, rules, and guidelines, we recommend removing the words "food" and "mandatory", and the three qualifiers under subsection (B) (i), (ii), and (iii) in this section. In many ways this tightens the requirements for exclusion but provides relief to sectors that were supposed to receive it in the first place.

I only know this since I've been involved with the Western Growers on issues surrounding the passage and implementation of SB54 since 2021.

Response to B-61-3

Comment rejected. CalRecycle rejects comments B-61-1 through B-61-5 as a group for the reasons provided in response to comment B-50-1, which is substantively identical to the group of comments. To the extent the final sentence of this comment adds substance to the group of comments, CalRecycle also rejects this comment because "negotiations around SB 54's language" is not legally relevant. The commenter appears to be referring to discussions between legislators and "stakeholders." Even assuming that interpreting statutory text requires examination of legislative intent, CalRecycle cannot lawfully rely on such discussions because they are not legislative history.

Comment B-61-4

The exemption language in Section 18980.2.4 doesn't work for produce. No doubt it does give companies the opportunity to argue for relief. But it also presents challenges that are as significant and more burdensome than those in the categorical exclusion. The exemption process only gives a two-year reprieve from complying with recycling rates but still paying the high fees imposed by Circular Action Alliance. There's the possibility of a five-year extension but with very stiff rules around obtaining. The applying organization has to review every possible replacement for a plastic package no matter whether it complies with the function plastic serves. It has to explain the science behind the materials to non-scientists with little or no knowledge of the sector. The language is also too permissive regarding how CAA evaluates applications and retains discretion over whether to advance it to CalRecycle. As written, there is little incentive for the PRO to consider applications. I'd suggest the language change from "may" to "shall".

The timeframe to develop new food packaging materials is long, backbreaking and expensive. Products must undergo extraction studies and testing to determine compliance with the Code of Federal Regulations (CFR), a process that can take months to years. The resulting data must then be submitted to the FDA for review, a process which can take several additional years. Finally, even when packaging materials are already FDA compliant, development timelines for the packaging itself often spans years to complete. This development process, called the "Valley of Death" by the scientists and researcher, is the high-risk phase between lab validation and market-ready production, where many startups fail due to misjudged scaling and funding, among other reasons.

Scaling production of any new materials will take billions of dollars and decades to achieve. I began working with compostable packaging over 25 years ago. Capacity remains very limited thanks to the expense of the material and it's failure to match the functionality of plastics. Plastic is central to the preservation of fresh-cut salads because they keep the lettuce alive by letting oxygen into the package and carbon dioxide out, a

miracle of science that extends shelf-life and reduces food waste. No compostable material has that function. Moreover, building out a corn or cellulose-based packaging industry wouldn't happen in my lifetime even with eco-modulation fees. Like anything, it takes a long time to raise money and build factories. This is the real world, unfortunately.

Making the case for plastic isn't just done by industry. The Oregon State Department of Environmental Quality (DEQ) performed a study to assess the connection between food waste and packaging. The report's central thesis is that packaging should be viewed as a tool to protect the "embedded" environmental resources of food. Among their many findings, they state, "Packaging plays an important role in protecting food from damage and contamination and extends the useful life of food items on the retail shelf and at home, thus potentially reducing wasted food and its environmental impacts." In assessing the relationship between food waste and GHG they concluded, "In general, the GHGE [Greenhouse Gas Emissions] associated with manufacturing food packaging is typically small relative to the emissions associated with producing and processing the food itself."

The report argues that for fresh produce, the "net environmental benefit" of packaging is high because produce is resource-intensive to grow but very easy to damage. In short, the most "sustainable" package is the one that ensures the food actually gets eaten. The Oregon DEQ report concludes that the most effective way to reduce the environmental footprint of our food system is prevention. Because packaging is a primary tool for prevention, "more" or "better" packaging is often the greenest option. The report is available here at: State of Oregon Department of Environmental Quality (DEQ). "Food Product Environmental Footprint Literature Summary: Packaging and Wasted Food" 2017 https://www.oregon.gov/deq/FilterDocs/PEF-Packaging-FullReport.pdf.

Just this past January the government of Canada weighed in on the implications of banning produce packaging to costs across the user chain, including consumers. Agriculture and Agri-Food Canada estimated that prices at the grocery store for produce would rise 5% to 10% if plastic were replaced by other materials, like compostables, because of the cost differential between plastic and any possible replacement. It also found that shipping produce without any packaging would dramatically increase food waste across the supply chain, thereby increasing Greenhouse Gas Emissions (GHG). In fact, the increase in GHG from food waste would swamp that from the production of plastic. The full report is available here: https://agriculture.canada.ca/en/sector/horticulture/reports/estimating-cost-implications-reducing-plastic-packaging-fresh-produce.

Response to B-61-4

Comment rejected. CalRecycle rejects comments B-61-1 through B-61-5 as a group for the reasons provided in response to comment B-50-1, which is substantively identical to the group of comments.

Comment B-61-5

I understand and appreciate the work that CalRecycle has put into formulating the regulations to enact SB54. I know myself and many others in the produce industry deeply support recycling because we do it in our own businesses every day. In fact, Emerald became a certified California Green Business several years ago in part because we recycle almost everything we touch. But the harm done to certain foods including produce in the latest draft will loom large in two or three years when the implication of the proposed regulations becomes all too clear, giving recycling a bad name it doesn't deserve.

Best wishes,

Kevin Kelly
Chief Executive Officer
Emerald Packaging, Inc.
kevin@empack.com
Mobile: (510) 384-5059
www.empack.co

Response to B-61-5

Comment rejected. CalRecycle rejects comments B-61-1 through B-61-5 as a group for the reasons provided in response to comment B-50-1, which is substantively identical to the group of comments.

O-1: Trash4tokens & Trashtalk (Clare Swithenbank-Bowman)

Comment O-1-1

I appreciate the opportunity to comment on the proposed revisions to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations during this 15-day written comment period.

I am writing to comment on the proposed revisions to sections 18980.2(a)(2) and 18980.2.2(b)(4), which address program implementation elements, reporting, verification, and documentation.

We intend to launch a Trash4Tokens campaign operated through an NGO-led model to support Extended Producer Responsibility (EPR) implementation by teaching proper plastic and packaging collection practices, incentivizing participation, and delivering measurable, verifiable pollution reduction outcomes.

The program will utilize the TrashTalk digital tracking system as an end-to-end verification platform. TrashTalk is designed to document and verify material flows across the full recovery chain, including collection activities, Material Recovery Facilities (MRFs), buy-back and redemption centers, baling and aggregation, downstream sales,

and processing into secondary (green) materials. The system supports time-stamped, geo-located, and auditable records that demonstrate chain of custody, diversion from landfill, avoided methane generation, and circular economy outcomes.

This approach enables verified reporting of collected and processed materials, including documentation of downstream use, lifecycle outcomes, and diversion metrics that support climate and environmental performance objectives under SB 54. The same tracking framework can also be applied to business, community, and event-based collection programs to ensure consistent and transparent data across different recovery pathways.

As CalRecycle finalizes the revised regulatory language, I respectfully recommend clarifying that:

Producer Responsibility Organizations may utilize verified third-party digital tracking systems that document material recovery across collection, sorting, baling, resale, and reprocessing stages;

NGO-led, education-based community collection programs may be supported where they demonstrate verifiable chain-of-custody data and diversion outcomes; and

Tracking systems capable of demonstrating landfill diversion, avoided methane emissions, and circular material use may be integrated as approved compliance and reporting tools.

Explicitly recognizing these capabilities within the revised regulations would strengthen data integrity, improve accountability, and support effective EPR implementation while advancing SB 54's circular economy and environmental justice objectives.

Respectfully submitted,

Response to O-1-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations. The comment purports to relate to section 18980.2(a)(2) and section 18980.2.2(b)(4), but section 18980.2.2(b)(4) has not been revised, and the comment does not address any issues related to the changes in section 18980.2(a)(2) or elsewhere.

O-2: PRINTING United Alliance (Gary Jones)

Comment O-2-1

See attached for our comment letter.

Response to O-2-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-2-2

February 4, 2026

California Department of Resources Recycling and Recovery (CalRecycle)
Regulations Unit
1001 I Street
Sacramento, CA 95814

Subject: *Opposition to Inclusion of Business-to-Business (B2B) Packaging Under SB 54 Regulations; Request for Explicit Exemption*

Dear CalRecycle Regulatory Team:

PRINTING United Alliance (Alliance) respectfully submits this comment letter to request that business-to-business (B2B) packaging be explicitly excluded as “covered material” under the proposed regulations implementing Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulatory text contains no exemption based on transaction types including B2B packaging and applies uniformly to all packaging sold, offered for sale, imported, or distributed in or into California, irrespective of whether the end recipient is a business or a consumer.

As demonstrated in legislative and official state analyses, SB 54 was enacted to address consumer-facing, residential waste streams, not commercial packaging that circulates strictly between businesses. The regulatory structure CalRecycle has proposed does not specifically exclude B2B packaging would therefore extend SB 54 far beyond its statutory purpose.

We urge CalRecycle to reconsider this approach and adopt an explicit exemption for B2B packaging for the reasons detailed below.

<u>Legislative Intent: SB 54 Focuses on Residential Waste and Consumer Burdens</u>

The Legislature has made clear that SB 54’s purpose is to shift the burden of managing single-use packaging waste away from California residents and local governments, placing responsibility on producers who introduce consumer packaging into commerce. A 2025 analysis from the California Senate District 38 office states that SB 54 “aims to shift the cost and burden of reducing waste from California residents, local businesses, and local governments to the companies that produce the waste.” 1

The design of SB 54 and the producer responsibility framework it mandates focuses overwhelmingly on consumer-facing packaging that enters household and curbside waste streams not commercial logistics materials that never enter the residential stream. The regulations place heavy emphasis on:

• Curbside collection systems and recycling programs operated by local jurisdictions.
• Consumer reuse/refill systems and requirements for return convenience.
• Recycling contamination issues originating from household disposal.
• Consumer-directed labeling rules (recyclable, compostable, chasing-arrows symbols).

These elements demonstrate the Legislature's core intent to reduce single-use packaging and plastic pollution generated by consumers, not to regulate industrial packaging flows between businesses. Section 18980.2.3 requires that exempted materials not be "commingled with unsorted material collected by curbside programs," clearly signaling a residential stream focus.

By contrast, B2B packaging is not managed through curbside systems, does not enter household recycling streams, is typically handled by sophisticated commercial recycling channels, has high recovery rates independent of consumer behavior, and does not contribute to consumer confusion, contamination, or litter problems.

Many provisions of the regulation are incompatible or irrelevant to B2B packaging, such as:
• Consumer-facing reuse and refill infrastructure requirements (Section 18980.2.1).
• Consumer disposal behavior assumptions.
• Requirements tied to labeling, marketing, and point-of-sale interactions.
• Public outreach, education, and awareness mandates.
• Restrictions aimed at reducing confusion among household recyclers.

Including B2B packaging in the scope of SB 54 expands the regulatory framework far beyond its intended domain. Requiring business-oriented packaging to comply with systems built for consumer behavior is both impractical and misaligned with the statutory objectives.

Committee and State Analyses Emphasize Consumer Waste, Not B2B Packaging

Committee-level and agency assessments consistently describe SB 54 as addressing the plastic pollution crisis experienced by everyday Californians and the strain on residential recycling systems. According to a statewide analysis, the law could prevent "mountains of plastic waste" and relieve burdens on California consumers2 which reinforces that the central target is waste generated through consumer interactions, not materials handled exclusively by businesses in controlled industrial settings.

Similarly, analyses from county and municipal partners highlight that SB 54 is intended to shift costs away from local governments managing consumer packaging and to

improve curbside recyclability—regulatory concepts that are irrelevant to business-to-business packaging.3

B2B Packaging Is Not Part of Residential Waste Streams and Is Already Managed Efficiently

Unlike residential packaging, B2B packaging is recovered through commercial channels, which achieve significantly higher recycling efficiency due to uniformity, scale, and contractual recycling systems. B2B materials do not enter curbside recycling programs, create household contamination, require consumer-facing labeling, or contribute to litter or pollution addressed by SB 54.

Applying consumer-oriented requirements, reuse/refill accessibility, curbside sortability, consumer labeling to commercial industrial packaging would not further the law's environmental purpose and would improperly expand the scope of SB 54.

B2B Packaging Is Already Recycled at Exceptionally High Rates

The proposed regulations repeatedly stress the need to improve recycling outcomes, contamination levels, and responsible end markets. However, B2B packaging typically consists of wooden and plastic pallets (some of which are reusable), envelopes, bags, steel or plastic drums, pails and buckets. sacks, wooden crates, corrugated cardboard, pallet wrap, industrial films, protective materials used in shipping and logistics.

These materials flow through commercial recovery systems that achieve recycling rates far above residential packaging, due to controlled environments, standardized material types, high-volume uniform streams, and existing contractual recycling programs. SB 54's requirements including eco-modulated fees, plan participation, audits, and reporting were not designed for packaging already performing at or above the recycling benchmarks outlined in sections 18980.2.3 and 18980.3.2.

Forcing B2B packaging into this framework would not meaningfully improve environmental outcomes yet would impose substantial compliance costs on industries that are not responsible for the residential waste problems SB 54 seeks to address.

Including B2B Packaging Imposes Unnecessary Economic Burdens

Requiring producers of B2B packaging to comply with SB 54 would impose substantial regulatory costs without corresponding environmental benefits. Significant compliance reporting burdens for packaging never seen by consumers, PRO fee structures applied to packaging that already has efficient recycling pathways, compliance costs that offer no environmental benefit, competitive disadvantages relative to companies in other states, and potential supply chain disruptions caused by unnecessary material changes

These costs contradict the Legislature's stated intent to relieve residents, taxpayers, and local agencies from the burdens of consumer packaging waste.[1][2][3] Moreover, the Governor's own directive in 2025 recognized that earlier regulatory drafts risked imposing excessive costs on businesses beyond the law's intended reach.4 Extending SB 54 to B2B packaging would perpetuate these concerns and fundamentally misapply the statute.

A B2B Exemption Aligns with the Structure of SB 54 and Existing Exclusions

SB 54 regulations already contain exemptions for a variety of packaging including long-term durable packaging, FDA/USDA-regulated packaging, reusable or refillable packaging, high-performance recycling streamsand materials managed solely through non-residential systems (Section 18980.2.3). The law clearly allows for material-based and context-based exclusions, and an explicit exemption for B2B packaging, materials that never enter the residential stream, is consistent with the logic of these provisions.

Because B2B packaging is entirely non-residential and already collected, sorted, and recycled outside consumer channels, an exclusion is entirely consistent with the regulatory structure.

For these reasons, PRINTING United Alliance respectfully requests that CalRecycle include the following explicit exemption for B2B packaging:

"Business-to-business (B2B) packaging that does not enter residential or curbside collection systems shall not be considered 'covered material' under these regulations."

This clarification will ensure the final rule aligns with the Legislature's intent, avoids unnecessary economic burdens, and maintains the program's focus on residential packaging waste, avoids imposing unnecessary economic burdens, and maintains the integrity and efficiency of existing commercial recycling systems.

Conclusion

The Alliance strongly supports California's goals to reduce plastic pollution and improve recycling outcomes. However, including B2B packaging despite its lack of connection to residential waste streams exceeds the intent of SB 54 and introduces significant and unnecessary burdens.

We urge CalRecycle to adopt an explicit exclusion for B2B packaging within the final regulatory text.

Thank you for your consideration. We welcome further dialogue and would be pleased to provide testimony or additional information.

Sincerely,

Gary A. Jones
Vice President EHS Affairs
PRINTING United Alliance
gjones@printing.org
703-359-1363

1 California Senate District 38. "New State Analysis Shows Billions in Savings, Massive Pollution Cuts — But Only if California's Landmark Plastic Pollution Reduction Law Is Fully Implemented." July 18, 2025. https://sd38.senate.ca.goy/news/new-state-analysis-shows-billions-sayings-massiye-pollution-cuts-only-ifcalifornias-landmark. [sd38.senate.ca.gov]
2 Billions in Benefits. Mountains of Plastic Waste Prevented. But Only If SB 54 Is Fully Implemented." July 21, 2025. https://www.nsaction.us/post/who-pays-for-waste-and-whose-costs-matter-most-why-california-s-sb-54-mustsucceed.
3 California State Association of Counties. "Updated Packaging Producer Responsibility Regulations Released with Troubling Broad Exemptions." May 29, 2025. https://www.counties.orenews-and-media-article/updatedpackaging-producer-responsibility-regulations-released-with-troubling-broad-exemptions/
4 "CalRecycle Reissues Draft SB 54 Regulations Targeting California's Plastic Packaging EPR Program." May 27, 2025. https://www.bdlaw.com/publications/calrecycle-reissues-draft-sb-54-regulations-targeting-californiasplastic-packaging-epr-program/.

Response to O-2-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-3: Pet Food Institute (Nicole Quinonez)

Comment O-3-1

February 6, 2026

Zoe Heller
Executive Director
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812-4025

Subject: California SB 54 Proposed Regulations: Pet Food Consideration

Dear Director Heller,

The Pet Food Institute (PFI) appreciates the opportunity to provide comments regarding CalRecycle regulations implementing SB 54.

Established in 1958, PFI is the trade association for U.S. cat and dog food and treat manufacturers. Our members account for the vast majority of pet food and treats made in the United States, providing complete and balanced nutrition for the dogs and cats in 94 million U.S. households. As the voice of U.S. pet food makers for over 65 years, we advocate for a transparent, science-based regulatory environment for our members and provide information about pet food and treat safety, nutrition, and health to pet owners.

PFI respectfully requests that CalRecycle appropriately accommodate, pet food packaging in its regulations implementing SB 54 (the Plastic Pollution Prevention and Packaging Producer Responsibility Act), to avoid conflict with federal food safety requirements under the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. § 301 et seq., and the Food Safety Modernization Act (FSMA), 21 U.S.C. § 2201 et seq.

Pet food is regulated as "food" under both federal law and California's Sherman Food, Drug, and Cosmetic Act. Packaging for pet food must meet stringent federal safety, sanitation, and performance standards that may preclude the use of alternative materials needed to satisfy SB 54's recyclability and compostability mandates within the statutory timelines. Absent a compliance pathway, producers may be forced into untenable conflicts between state environmental requirements and federally mandated food safety obligations, which are subject to federal preemption.

Pet Food Is "Food" Under Federal and California Law
Under the FD&C Act, "food" is defined to include "articles used for food or drink for man or other animals." (21 U.S.C. § 321(f)) As a result, pet food is regulated as food, and its packaging is regulated as food-contact material subject to FDA oversight.

California law expressly mirrors this definition. The Sherman Food, Drug, and Cosmetic Act defines "food" as: "Any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal," and "any article used or intended for use as a component of any such article." (Health & Safety Code § 109935)

This definition has been part of California statutory law for decades, and accordingly, pet food packaging should be treated in the same manner as human food packaging when considering accommodations necessary to comply with food safety law.

PFI is particularly concerned that the proposed regulation's section 18980.1 defines "Food" as having the same meaning as in Section 113781 of the Health and Safety Code. Food is defined in that section as "a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part f**or human consumption**, and chewing gum." Because of this definition, we are concerned that the accommodations for a food or agricultural commodity provided in Section 18980.2 of the proposed regulation may not be applicable to pet food.

Federal Regulation of Pet Food Packaging
A. FD&C Act and Food-Contact Substance Requirements

Under the FD&C Act, food is deemed adulterated if it bears or contains a harmful substance or if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated. (21 U.S.C. § 342(a))

Packaging materials for pet food must comply with FDA's food-contact substance framework, including:
• 21 U.S.C. § 348 (food additives),
• 21 CFR Parts 174–178 (indirect food additives, including polymers, coatings, adhesives, and paper),
• FDA's Food Contact Notification (FCN) program.

Packaging materials must be demonstrated to be safe for their intended use, resistant to chemical migration, and suitable for contact with fats, oils, moisture, and processing conditions typical of pet food manufacturing. Pet food packaging often includes **multi-layer films, metalized foils, and barrier coatings** designed to protect fats and oils, prevent spoilage, and keep nutrients stable. These materials can be *technically difficult to make recyclable or compostable* with current commercial infrastructure. Substituting alternative materials to meet SB 54 recyclability or compostability criteria may require new FDA approvals and may not be technologically feasible or timely, undermining market availability and food safety.

B. Food Safety Modernization Act Preventive Controls and Current Good Manufacturing Practice Requirements
The Food Safety Modernization Act (FSMA) requires facilities that manufacture, process, pack, or hold animal food to implement hazard analysis and risk-based preventive controls. (21 U.S.C. § 350g; 21 CFR Part 507)

Under 21 CFR § 507.33, facilities must identify and control biological, chemical, and physical hazards based on a risk assessment. This includes those arising from packaging materials. Current good manufacturing practices (CGMP) further require that packaging be "suitable and adequate to protect the animal food" and used in a manner that prevents contamination. (21 CFR § 507.27)

Packaging integrity, barrier performance, and resistance to degradation are therefore integral to compliance with federal law. Materials that compromise seal integrity, moisture barriers, oxygen barriers, or chemical stability may violate FSMA preventive controls and CGMP requirements.

Special Considerations for Shelf-Stable and Canned Pet Food
Low-acid canned pet food is subject to additional FDA requirements under 21 CFR Part 113, which are designed to prevent the growth of Clostridium botulinum and other pathogens. Compliance depends on packaging that can withstand thermal processing, maintain hermetic seals, and preserve sterility over extended shelf life.

Recyclable or compostable materials contemplated under SB 54 may not currently meet these performance requirements, creating a direct conflict between state packaging

mandates and federal food safety law, if no process is made available to pet food manufacturers equal to those afforded for human food packaging.

Conflict With SB 54 Requirements and Federal Preemption
SB 54 and its implementing regulations require covered packaging to be recyclable or compostable and to meet escalating source reduction and recycling rate targets.

Where compliance with these requirements would require a producer to adopt packaging that:
• Is not authorized by FDA for food-contact use,
• Undermines FSMA preventive controls,
• Compromises microbial safety, shelf life, or structural integrity,
the producer would be forced to choose between compliance with state law and violation of federal law. Under well-established principles of federal preemption, state regulations may not compel conduct that conflicts with or frustrates federal food safety requirements.

Requested Regulatory Action
To harmonize SB 54's environmental objectives with mandatory food safety requirements, we respectfully request that CalRecycle:
1. Change the definition of food to the definition in Health & Safety Code § 109935; or
2. Clarify that pet food packaging required to comply with FD&C Act and FSMA safety requirements is included under Section 18980.2 of the proposed regulations; or
3. Include an express conflict-avoidance provision stating that nothing in the SB 54 regulations shall be interpreted to require pet food packaging changes that would conflict with FDA requirements under 21 U.S.C. §§ 301 et seq. and 350g, or 21 CFR Parts 174–178, 507, or 113.

Conclusion
Pet food packaging is governed by a comprehensive federal and state food safety framework that prioritizes microbial control, chemical safety, and structural integrity.

California law has long recognized that food for animals is "food" in the same sense as food for humans, and packaging for both must meet equivalent safety standards. CalRecycle's SB 54 regulations should therefore be implemented in a manner that avoids conflict with federal law, protects animal health, and provides regulatory certainty. We respectfully urge CalRecycle to adopt an accommodation for pet food packaging consistent with these legal requirements.

On behalf of PFI members, whose nearly 35,000 employees in 34 states provide safe food for the dogs and cats in 94 million U.S. households, we thank you for the opportunity to share our views.

Sincerely,
Savonne Caughey

PFI Vice President of Government Relations and Advocacy

Response to O-3-1

Comment rejected. Regarding the assertion that the section 18980.2(a)(2) requires a separate submission for each product, the commenter is incorrect. Section 18980.2(a)(2) does not prevent notices from addressing packaging by "specification family." Subparagraph (A) states that the notice must "specifically describe all packaging and packaging components to be excluded and the associated products." Regarding the request for a "rebuttable presumption," no change is necessary because, as written, that is the effect of subparagraph (C), under which CalRecycle must notify the submitter that the notice is incomplete within 90 days of receipt. Regarding "federal citations and supplier attestation," no change is necessary because nothing in section 18980.2(a)(2) prevents submissions from being considered adequate. The effect of subparagraphs (C) through (E) is that, unless "challenged" by CalRecycle based on incompleteness (subparagraph (C)) or a determination that the notice is not adequately supported (subparagraph (E)), the notice is sufficient to render the packaging at issue not "covered material."

O-4: Association of California Recycling Industries (ACRI) (Melinda Andrade)

Comment O-4-1

The Association of California Recycling Industries (ACRI) represents businesses that are committed to protecting the rights of independent recyclers and promoting free-market competition for recyclable materials.

The recyclable determinations for 25_PF9P, 25_PF10P, 25_PF11P, and 25_PF12P are incorrect. Poly-lined or poly-coated (plastic coated) fiber products should not be classified as recyclable, yet these categories are listed as such.

The determination for 25_PF14P is correct. Molded fiber with plastic is not recyclable because end users cannot accept or process poly-coated material.

Cardboard, paperboard, white paper, and mixed paper containing plastic coatings are not recyclable and export markets reinforce this reality. Mills in Southeast Asia classify poly-lined or poly-coated fiber as prohibited contamination and do not accept it. While some end users may process these materials at very low levels, others report that even negligible content can lead to load rejections by customs or regulators due to strict contamination standards.

The Covered Material Category (CMC) list should be updated to reflect these market realities.

Response to O-4-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-5: City of San Jose (Kathryn Walsh)

Comment O-5-1

To Whom It May Concern:

The City of San José (City) appreciates the opportunity to submit comments on the Proposed Regulation Text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act, dated January 29, 2026, developed by CalRecycle for the implementation of Senate Bill (SB) 54.

Integrated Waste Management

The Integrated Waste Management (IWM) division within the City's Environmental Services Department oversees solid waste collection, processing, and disposal for residential, commercial and City Facilities operations. IWM develops and implements programs to meet or exceed state regulations, provides ease of use and exceptional value to customers, and improves and protects the environment by reducing greenhouse gas emissions associated with the disposal of solid waste. The City's Residential Garbage and Recycling Program provides curbside garbage and recycling, and yard trimmings to approximately 216,500 single-family and 118,400 multi-family households. IWM oversees commercial solid waste collection services to about 8,000 accounts at business sites in San José.

Specific Comments

SB 54 is intended to shift packaging pollution responsibility to the producers of such materials and lessen the substantial burden on local jurisdictions related to waste collection and processing of covered materials, per CA Public Resources Code (PRC) § 42040 (b)(2)(A). We commend CalRecycle's efforts to lower emissions of carbon dioxide, methane, and volatile organic compounds and reduce the amount of plastic and other packaging and food serviceware waste disposed of in landfills by shifting to materials that are either fully recyclable or fully compostable.

The City greatly appreciates that language in Section 18980.2(a) of the proposed regulations was modified to create necessary boundaries on the categorical exclusion provision first included in the previous version of the proposed regulations. The previous version of Section 18980.2(a) was directly additional to the legally allowable categorical exclusions specified in PRC Section 42041(e)(2), which entirely exempt products from being considered covered material under SB 54. The City also greatly appreciates that the process of categorical exclusions being granted has been changed so that

exclusions are only granted upon CalRecycle's review and approval. These changes have addressed several of our key concerns with Section 18980.2 in the proposed regulations.

However, we have several significant concerns about the language included in the proposed regulations. These concerns are as follows:

1. Section 18980.2: Categorically Excluded Materials

The City is highly concerned that the categorical exclusions outlined in Section 18980.2(a) are both permanent and rely upon information submitted at the time of the notice's submittal to CalRecycle. Section 18980.2(a)(2)(B) requires that such a notice include information demonstrating that "it is not reasonably possible to use any alternative packaging or packaging components that would avoid the conflict." This requirement does not, however, take into consideration that packaging innovation may occur so that alternative packaging that would avoid the conflict could be utilized in future years. One of SB 54's primary goals is to spur innovation in packaging design in the state of California; therefore, such innovation is both likely and expected in the next several years. The language currently included in the proposed regulations is contrary to this goal, since it would allow producers to submit notice to CalRecycle that their products qualify for a permanent categorical exclusion based solely on packaging designs that have already been developed at the time of their application. This is neither in keeping with the letter or intent of the law.

Another strong concern that we have with this section in the proposed regulations is that while Section 18980.2(a)(2)(D) contains a requirement for CalRecycle to ensure that notices submitted by producers are complete, it does not contain a requirement that notices adequately demonstrate that "it is not reasonably possible to use any alternative packaging or packaging components that would avoid the conflict." As such, there is no requirement for CalRecycle to evaluate whether or not the basis for which producers would submit a notice for a categorical exclusion is valid, only a requirement that CalRecycle evaluate whether the notice explains why a producer believes that a categorical exclusion should apply to a given packaging type. Due to this language, exclusions could be granted for packaging types that do not meet the standard of what constitutes "not reasonably possible" described in 18980.2(a)(2)(B), as long as the producers of such packaging types acknowledge the existence of this standard.

Additionally, the City remains highly concerned that as currently written, secondary and tertiary packaging for categorically excluded materials receive a categorical exclusion as well. These materials are fundamentally indistinguishable from those used for primary packaging, as well as secondary and tertiary packaging associated with covered materials that would remain in the SB 54 system. Cardboard boxes and flexible film are two examples of secondary and tertiary packaging types used by a wide variety of producers. If some producers receive categorical exclusions for such packaging types while others do not, the financial responsibility for the packaging system that producers are required to take on will be unequally distributed. The overall financial

responsibility of producers to manage covered materials would also be greatly diminished. This would reduce both the effectiveness of SB 54 implementation and the financial benefit to local jurisdictions and ratepayers that is integral to SB 54.

Recommendation: Add language requiring CalRecycle to re-assess all notices included on the publicly available database outlined in Section 18980.2(a)(2)(D) within 2 years of the date each notice was deemed complete, to ensure that the conditions specified in Section 18980.2(a)(2)(B) continue to be met, taking into consideration any innovations in packaging design that may have occurred in the intervening time. This would ensure that producers are not granted permanent categorical exclusions based on information that is no longer relevant to a notice's basis for being confirmed by CalRecycle.

Recommendation: Add language to Section 18980.2(a)(2)(C) requiring CalRecycle to assess whether the standard of what constitutes "not reasonably possible" described in 18980.2(a)(2)(B) is adequately demonstrated. We suggest Section 18980.2(a)(2)(C) be modified as follows: "Upon receipt of the notice, the Department shall confirm that the notice is for a food or agricultural commodity and that it fully and adequately demonstrates contains all elements described in subparagraph (B). If the notice does not fully and adequately demonstrate contain all such elements or if the Department identifies packaging or packaging components that the notice did not address but that would avoid the cited conflict, the Department shall notify the entity within 90 days of receipt of the notice that the notice is incomplete and requires resubmission pursuant to subparagraphs (A) and (B)."

Recommendation: Delete the categorical exclusion for secondary and tertiary packaging of categorically excluded materials specified in Section 18980.2(b). This exclusion is not in keeping with statute.

2. Public Comment on PRO and Independent Producer Plans

The City appreciates that language has been changed in Sections 18980.6.1(d), 18980.6.3(b), 18980.7(b), and 18980.7.2(b) to clarify that PRO and Independent Producer Plans must be made "available to the public for review and comment" prior to these plans' submittal to CalRecycle for review. However, the City is concerned that the proposed regulations do not adequately establish a public forum for the PRO and Independent Producers to hear these comments. Though the proposed regulations require the entity submitting a Plan to include a "summary of all comments received from the advisory board and the public, and identify revisions, if any, made in response to the comments" to CalRecycle alongside the Plan, there is no requirement for the comments to be made easily accessible by the public during the Plan development process. Similarly, there is currently no requirement for the PRO, Independent Producer or CalRecycle to host public meetings that are focused on giving the public a clear avenue to comment on the Plan that is under development. This may lead to PRO and Independent Producer Plans being developed with less public input and less transparency than is necessary for SB 54 implementation to be successful.

Recommendation: Include a requirement in Sections 18980.6.1(d), 18980.6.3(b), 18980.7(b), and 18980.7.2(b) for a PRO or Independent Producer developing a program Plan to host multiple public comment hearings on the drafted Plan. Further include a requirement for the relevant entity to publicize such hearings on the entity's website and through established channels of communication, such as emails from the entity and CalRecycle and through communication with the League of California Cities and other relevant associations.

Continued Concerns

The City appreciates CalRecycle's efforts to analyze and incorporate changes based on the comments received during the comment period that ended on October 7, 2025 and during the first formal rulemaking process. We understand that comments during the current comment period are restricted to the sections that were changed during the most recent version of the proposed regulations.

However, several sections that are relevant to local jurisdictions and the effective implementation of the intent of SB 54 remain unchanged from the language that was included in the previous version of the proposed regulations. We continue to have concerns about the following sections of the proposed regulations:

Section 18980.4.1 & 18980.3.5 (End Market Identification & Disposal Definition);
Section 18980.8(g) (Covered Costs of Local Jurisdictions and Recycling Service Providers);
Section 18980.11(b) (Requirements for Local Jurisdictions and Recycling Service Providers);
Section 18980.11.1 (Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers);
Section 18980.8(h) (Dispute Resolution Process); and
Article 13: Enforcement

Our concerns related to these sections of the proposed regulations have been detailed in previous comments during the comment period that ended on October 7, 2025, as well as throughout the first formal rulemaking process. We look forward to reviewing the Statement of Reasons to better understand why several of our comments on these sections of the proposed regulations were not addressed.

Thank you for your consideration of these comments. The City looks forward to working with CalRecycle to develop regulations aimed at plastic pollution reduction and increasing the amount of packaging that can be recycled and composted in jurisdictions across the state.

Sincerely,
Jeff Provenzano

Director, Environmental Services Department, City of San José

Response to O-5-1

Comment rejected. The commenter's concern over the packaging innovation that may occur after a notice establishes that the exclusion under section 18980.2(a)(2) applies does not warrant a change. The proposed regulation accounts for the possibility that the exclusion may no longer be justified. As explained in section 18980.2(a)(2)(E), all notices are subject to CalRecycle's determination that an exclusion notice is no longer justified. The commenter is incorrect, therefore, that the regulation does not consider that such "packaging innovation may occur." The mechanism included in section 18980.2(a)(2) will provide protection against unjustified exclusions comparable to the protection that would be provided under the commenter's proposal that notices be reviewed within two years. Because many, if not most, notices will rely on substantially identical justifications, CalRecycle's review of any notice is likely to apply to a large number of notices and potentially result in disqualification of them from the exclusion. The commenter's proposal is also effectively less rigorous than the proposed regulation because the review requirement would be met once a notice was reviewed, without additional requirements for periodic review.

The assertion that there is no requirement for CalRecycle to evaluate the basis for the exclusion" also does not warrant a change. To satisfy the requirements stated in subparagraph (C) of section 18980.2(a)(2), the notice must address the substantive standard set forth in subparagraph (B). And, if the notice fails to address known packaging that CalRecycle identifies as complying with federal law, the notice must be supplemented to address such alternatives. In other words, merely acknowledging the existence of the requirements of section 18980.2(a)(2) will not be sufficient. These features of the proposed regulation adequately protect against bad faith claims that the exclusion applies and avoids an untenable burden on both CalRecycle and affected entities, which face heightened regulatory and operational obstacles under relevant federal laws implicating Public Resources Section 42060(b).

Regarding secondary and tertiary packaging, no response is necessary because the comment concerns section 18980.2(b), which has not been revised. To the extent the commenter's concern was intended to concern secondary and tertiary packaging in the context of exclusion under section 18980.2(a)(2), it is unwarranted because packaging is only exempt if it can be shown to be necessary for complying with federal law. Relatedly, the concern over distribution of costs does not warrant a change to the regulation because the Act inherently acknowledges that certain packaging is not covered material and does not result in any entity being obligated as a producer.

Regarding sections 18980.6.1(d), 18980.6.3(b), 18980.7(b), and 18980.7.2(b), CalRecycle declines to make the suggested changes because the Act does not contemplate a formal "public forum" or public meetings. Such measures would not meaningfully enhance opportunities for public engagement because

engagement via written comments is as effective and more efficient. Likewise, benefit of requiring all comments to be publicly available while the plans are under development would not outweigh the additional administrative burdens associated with such a requirement. Moreover, CalRecycle has the authority to obtain comments to verify that they have been accurately summarized and considered. The comments would thus be public records subject to disclosure requirements under the Public Records Act.
No response is required to the portion of this comment labeled "continued concerns" because they do not concern revisions made to the 45-Day Changes.

O-6: Asphalt Roofing Manufacturers Association (ARMA) (Miriam Higginbotham)

Comment O-6-1

The Asphalt Roofing Manufacturers Association (ARMA) appreciates the opportunity to submit, on behalf of its members, comments regarding CalRecycle's proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations, which have been published for an additional 15-day comment period. ARMA is a trade association representing North America's asphalt roofing manufacturing companies and their raw material suppliers. Our members account for approximately 90% of North American production of asphalt shingles and asphalt low-slope roof membrane systems. Additional information about ARMA's mission and activities can be found on its website, https://asphaltroofing.org/about-arma/about-us/.

Given the primary focus of the SB 54 regulations on consumer products, ARMA urges CalRecycle to issue a determination that construction & demolition (C&D) waste and packaging for business-to-business products are beyond the scope of the regulations, or incorporate exemptions for these materials in the regulations. Including business-to-business packaging, which typically goes through other disposal streams for reuse and recycling, and never makes it to consumers, would impose financial burdens on producers that could be business-prohibitive.

There are limited "responsible end markets" available for C&D waste, and yet there is no exemption available for construction materials under the proposed regulations. At a minimum, items like wooden pallets should be exempted from the regulations. As noted in prior ARMA comments submitted on June 3 and October 6, 2025, our members use wooden pallets as a key component of transportation and construction packaging for asphalt roofing products. Data from the National Wooden Pallet & Container Association (NWPCA) shows that wood pallets are reused and repurposed at exceedingly high rates, particularly when compared to the 15% recycling rate for plastics: 95% of pallets are recovered into usable materials. Pallets comprise only 1.8% of all wood landfilled by MSW landfills and 5.6% landfilled by C&D landfills. See NWPCA, https://www.palletcentral.com/page/LandfillAvoidance.

Indeed, ARMA's Asphalt Shingle Roofing System Life Cycle Assessment estimates that pallets are reused 20 times in asphalt shingle roofing manufacturing. See ARMA

Environmental Product Declaration: Asphalt Shingle Roofing System, Installation: Fastened (2023), https://www.asphaltroofing.org/wp-content/uploads/2024/02/111.2_ARMA-Asphalt-Shingles.pdf.

Given that wooden pallets are already part of a well-established circular system, ARMA urges CalRecycle to clarify that wooden pallets are not a priority packaging material for SB 54 regulation, and provide an exemption for wooden pallets as a covered material under SB 54. Such an exemption would be in keeping with the approach taken by Oregon under its packaging EPR law, the Plastic Pollution and Recycling Modernization Act (SB 582), which provides a specific exemption from the definition of "covered products" for "(r)igid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack, or similar device." Section 2(6)(b)(D). ARMA requests that CalRecycle provide a similar exemption for pallets under SB 54.

We note there is inherent difficulty in trying to reduce packaging for construction materials, as it is essential to ensure adequate protection of products during shipping and handling. Package durability is critical because of the harsh environments in which they are commonly distributed and installed.

ARMA appreciates CalRecycle's consideration of these comments, and we welcome the opportunity to respond to questions if additional information is needed.

Sincerely,

Reed B. Hitchcock
Executive Vice President

Response to O-6-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

O-7: California Poultry Federation (Bill Mattos)

Comment O-7-1

Dear Director:

As a member of the food and agriculture community, I write to convey concerns regarding CalRecycle's SB 54 rulemaking, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. The current regulation contains extraordinary compliance issues that fly in the face of affordability, and I respectfully ask that the final regulation restore a workable categorical exclusion for food and agriculture, as included in the prior draft.

The regulation poses significant risks and challenges for food and agriculture in California. The proposed changes to section 18980.2(a)(2) (Categorically Excluded Material) will significantly impact food and agriculture's ability to conduct business in the state and provide safe and affordable food. Further, the inclusion of the word "mandatory" in this section, and the proposed requirement to prove no other packaging alternative is "reasonably possible," each create conditions that would make certain food and ag exclusions - meant to protect human health and prevent environmental safety issues - impossible to obtain. Additionally, SB 54's statutory language requires that the regulation not conflict with "guidelines" relating to food safety requirements outlined by the FDA and USDA, not mandatory laws.

Food and ag products require extensive R&D to create packaging materials that adhere to specific food safety guidance and prevent the spread of pests and diseases. For these reasons, I encourage you to reinstate a workable categorical exclusion acknowledging such guidance as a mechanism for food and ag to comply with the statute.

Sincerely,

Bill Mattos California Poultry Federation
4640 Spyres Way, suite 4, Modesto
Modesto, CA 95356-9800

Response to O-7-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises.

O-8: Monterey Bay Aquarium, Ocean Conservancy, and Oceana (Jennifer Fearing)

Comment O-8-1

February 12, 2026

Ms. Karen Kayfetz
Branch Chief, CalRecycle Product Stewardship Branch
1001 I St
Sacramento, CA 95814

Emailed to: packaging@calrecycle.ca.gov and submitted via CalRecycle comment portal

Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026

Dear Ms. Kayfetz,

Our organizations remain opposed to the unlawful provisions of CalRecycle's proposed regulations implementing Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act, published on January 29, 2026. We are disappointed that the costly and problematic categorical exclusion for food and agricultural products was not removed entirely in response to the Office of Administrative Law's concerns We are also disappointed that CalRecycle did not address the additional substantive concerns that we and many other entities and lawmakers have repeatedly raised, such as the exclusion of over-the-counter drugs and the allowance of hazardous technologies to count as recycling. These failures continue to leave California out of step with the six other states implementing EPR for packaging.

Several proposed provisions remain in conflict with statutory language, exceed CalRecycle's authority, and significantly undermine the goals of the law to reduce plastic pollution and hold producers accountable for the cost of managing their waste. We concur with the latest concerns conveyed to the Administration by Senators Allen and Blakespear and Assemblymembers Bryan and Hart, joined by many of their colleagues, as well as concerns outlined in previous legislative sign-on letters.

Response to O-8-1

Comment rejected. No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-8-2

We focus this letter on the updated language around the food and agricultural packaging exclusion but have attached our prior comments on the other problematic provisions that remain in the regulations.
Our prior comments also include substantial information on the need for effective enforcement of SB54 to reduce plastic packaging and foodware.

California must continue to be at the forefront of environmental policy, and effective enforcement of SB54 is California's opportunity to continue in its leadership to tackle plastic pollution.

THE PROPOSED REGULATIONS CONTINUE TO UNLAWFULLY EXPAND THE SCOPE OF EXCLUSIONS FOR FOOD AND AGRICULTURAL PACKAGING AND CONTINUE TO PLACE THE DETERMINATION OF WHETHER SUCH MATERIAL IS CATEGORICALLY EXCLUDED IN THE HANDS OF INDUSTRY.

SB 54 directs CalRecycle to ensure regulations under SB 54 are not in "direct conflict" with federal laws and regulations related to food safety and tamper-evident packaging. The proposed regulations have gone significantly beyond the statutory directive by enabling exclusions for any "packaging or packaging components used by a food or

agricultural commodity (without regard to its origin) if it is not reasonably possible to use packaging or packaging components that comply with both the Act and mandatory regulations, rules or guidelines issued by the United States Department of Agriculture [USDA] or the United States Food and Drug Administration [FDA]." The proposed regulations authorize producers to determine whether their packaging components are excluded under §18980.2 and simply provide notice to the Department. The proposed regulations then describe a timeline and burden that CalRecycle must meet to evaluate and potentially disqualify the exclusion, potentially taking up to *300 days.* As written, this approach creates the following highly disruptive and undermining concerns:

The volume of exclusion determinations by producers is likely to be very high—not only creating an impossible amount of work for CalRecycle to undertake, but resulting in a significant and unwarranted reduction in the scope of SB 54's covered items.

The cost to process, review, and analyze each determination is likely to be high. Given that there is no mechanism outlined in the regulations for producers to pay for the Department's effort for this review, the costs for each review will be borne by taxpayers— at a time where the state is making tough decisions about how to spend limited General Fund dollars.

The timeline incentivizes producers to make these determinations because they can avoid paying into the program for up to a year, even if CalRecycle ultimately determines the notice is invalid. Nothing in the regulations requires the producer to pay back the PRO for the effort made to collect those materials during the time that the component was wrongfully excluded.

The evaluation process under this provision could swallow the entirety of CalRecycle staff effort to manage the program, and result in exclusions that last far longer than justified by the information provided by the producer.

The uncertainty this provision generates for the PRO as they work to draft and submit a plan in mid-2026 is considerable—making it impossible to develop an accurate plan with the likelihood that producers will claim a significant number of exclusions.

Federal "guidelines" are a very low bar, and one highly susceptible to lobbying by the very producers hoping to avoid their responsibility to join and pay into the program.

The lack of a timely re-review of excluded materials could result in a failure to recognize when packaging innovation or recycling improvements have occurred that eliminates any claimed direct conflicts with federal regulations, and does not allow the state to reconsider the existence of any conflict relative to any future changes in federal guidelines, regulations, or law. A timebound limitation on any exclusion or a required resubmission of information would help ensure that the regulations continue to encourage innovation and stay aligned with any federal policy.

Lastly, this provision shows a fundamental incongruity in CalRecycle's application of SB 54's broad directives to avoid conflicts with federal law and to avoid disproportionate harms of the regulations and infrastructure on disadvantaged and low income communities, and rural areas. While CalRecycle has now construed this provision to respond to the advocacy by industry producers as necessary, it has continued to insist that the agency has met SB 54's obligation to ensure the avoidance and minimization of harm to communities that have long borne the brunt of plastic pollution, landfills, and other waste management infrastructure, is addressed broadly and not in need of a specific provision to address it. CalRecycle has, therefore, made plain with this approach that it is responding directly to the lobbying of producer interests while ignoring and diminishing the repeated calls by the environmental and environmental justice community for similar protection of its interests.

We understand from your comments at the Packaging Producer Responsibility Advisory Board meeting on May 30, 2025, and the public workshop on May 27, 2025, that this exclusion was not intended to be a wholesale exclusion of any packaging that may be regulated by the USDA or the FDA and was meant only to apply narrowly to "commodities with irreconcilable conflicts" where a commodity has "zero options to comply with SB 54 and also comply with required federal" standards. You also remarked that if any "innovation in the field that opens up new packaging options... the exclusion would cease to apply."
However, this exclusion is simply unnecessary as SB 54 already includes a process to exempt covered material under the unique challenges or health and safety exemption provisions (§18980.2.4). If there are situations where the requirements under federal law are truly "irreconcilable" with SB 54 compliance, producers can make their case and CalRecycle can grant time-bound exemptions that require reassessment.

CONCLUSION

SB 54 is an affirmative effort by the state to arrest the uncontrollable costs associated with packaging waste on consumers and address the health impacts associated with plastic production, use, and pollution which are borne disproportionately by vulnerable communities. SB 54's core tenet is that costs to consumers and ratepayers will decrease when industry finally takes responsibility for the full lifecycle of their products' packaging from design to end of life. Motivated as they are to maximize profit, innovate, and compete, SB 54 incentivizes producers to transition to materials that have value beyond a single use. Unfortunately, the proposed regulations will not reduce costs to consumers, businesses, or local governments. Instead, the proposed regulations will likely increase costs to some producers, haulers, and local governments, and would allow many producers to carry on business as usual while Californians continue to shoulder the costs.

California must continue to be a global leader in combating the plastic pollution crisis. It is imperative that the state's regulations not undermine the strong mandates under the law. We look forward to continuing to engage with CalRecycle on the implementation of

this monumental law. If you have any questions based on our feedback, please reach out to Jennifer Fearing (jennifer@fearlessadvocacy.com).

Sincerely,

Anja Brandon, Ph.D.
Director, Plastics Policy
Ocean Conservancy

Christy Leavitt
Senior Campaign Director, Plastics
Oceana

Amy Wolfrum
Director, California Policy & Government Affairs
Monterey Bay Aquarium

Attachments

Response to O-8-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. As explained in those responses and in response B-3-1 (submitted in response to the 15-Day Changes), the revised regulation clarifies that "guidelines" does not refer to any voluntary standard. The commenter is thus incorrect that "guidelines" sets a "very low bar"; guidelines are only relevant to the extent they express mandates under relevant laws and regulations.

Regarding "timely re-review" and the potential for innovation and recycling improvements, CalRecycle rejects this comment for the reasons provided in response to comment O-5-1. The commenter's assertion that section 18980.2(a)(2) does "not allow the state to reconsider the existence of any conflict" is false; subparagraph (E) expressly contemplates reconsideration.

Regarding the commenter's assertions that section 18980.2(a)(2) will create an "impossible amount of work" and "swallow the entirety of CalRecycle staff effort," no change is appropriate because the change the commenter suggests—reliance on exemptions pursuant to section 18980.2.4—would not ameliorate that concern. Instead, it could increase the burden on CalRecycle because exemption applications must address more complex matters than those relevant under section 18980.2(a)(2).

Regarding uncertainty generated by section 18980.2(a)(2) and the timelines for ultimate determinations, such challenges are inherent in the requirement in PRC 42060(b) that conflicts with federal law be avoided, and the commenter's

proposed solution (relying on section 18980.2.4 exemptions) would likely result in similar uncertainty because the same entities that would otherwise submit a notice pursuant to section 18980.2(a)(2) are likely to take the position that they should be exempt under 18980.2.4. Furthermore, the provisions added in subparagraph (C) (concerning completeness of notices) and (F) (denying effect to notices for packaging similar to those under consideration or rejected pursuant to subparagraph (E)) effectively minimize the risk that producers can benefit from the timeline required for CalRecycle to address unjustified notices.
Regarding the assertion that 18980.2(a)(2) will increase costs "borne by taxpayers," that assertion is baseless because Public Resources Code section 4053.5 imposes responsibility on the PRO for the full costs CalRecycle incurs implementing and enforcing the Act.
Regarding disproportionate harm on disadvantaged and low-income communities and rural areas, the commenter offers a general objection without explaining how section 18980.2(a)(2) implicates the possibility of such disproportionate harm. Without any explanation of such a link, CalRecycle cannot consider whether the commenter's concerns warrant a change.
Regarding the attachments included with this comment, no response to them is necessary because they do not concern the 15-Day Changes. They are a resubmission of the commenter's previous submission concerning the 45-Day Changes and to which CalRecycle has responded separately. The attachments are included in the rulemaking record.

O-9: International Foodservice Distributors Association (Joe Kalmin)

Comment O-9-1

February 12, 2026
By Electronic Submission
Csilla Richmond
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 “I” St., MS-24B
Sacramento, CA 95814

RE: Revisions to the Proposed Regulations Implementing California’s SB 54 – Plastic Pollution Prevention and Packaging Producer Responsibility Act

To Whom It May Concern:

The International Foodservice Distributors Association (IFDA) appreciates the opportunity to provide comments on the revisions to the proposed regulations implementing California Senate Bill 54.

IFDA is a non-profit trade association representing businesses in the foodservice distribution industry. Our $400+ billion industry delivers approximately 33 million cases of food and related products to more than one million professional kitchens across America every day. IFDA counts many of its members as leaders in sustainable solutions to plastic and packaging waste. Furthermore, our members operate predominantly business-to-business (B2B) supply chains in commercial channels using packaging designed to protect product integrity and reduce damage and food waste.

We respectfully submit the following comments, limited to the revisions to the proposed regulations (January 29, 2026, notice).

USDA/FDA-Regulated Packaging – Streamlining the Newly Expanded Notice and Demonstration Requirements (§18980.2(a)(2)(A)–(C))

The proposed revised text introduces significantly expanded procedural requirements for the statutory exclusion covering packaging governed by mandatory **USDA or FDA** regulations. These revisions include:

• Mandatory electronic notices;
• Item-specific conflict identification;
• Publication in a statewide database; and
• A stringent multi-factor test requiring demonstration that **no feasible federally compliant alternative exists,** with 60-day response obligations and potential loss of exclusion after 180 days.

IFDA supports the statutory intent of **PRC §42060(b)(2)** to categorically exclude federally governed packaging where SB 54 otherwise conflicts. However, the newly expanded procedural steps present significant concerns.

• They introduce **SKU-level redundancy**, contrary to the statute's aim of a categorical, conflict-preempting exclusion.
• They create risk of **material disruption** in federally regulated food supply chains if essential packaging loses exclusion due to administrative technicalities rather than scientific justification.
• They impose operational burdens that are **particularly disproportionate** for distributors who neither select nor control federally required packaging.

IFDA Recommendation
We respectfully request that CalRecycle modify the proposed revised text to allow:
1. **Single submissions per packaging specification family,** rather than repeated notices for each product application;
2. A **rebuttable presumption** of exclusion after notice is filed, unless CalRecycle identifies contradictory evidence within a defined timeframe; and
3. Acceptance of **federal citations and supplier attestations** as adequate justification, unless challenged.

These refinements preserve statutory consistency while ensuring continuity of food safety practices.

Conclusion
IFDA appreciates CalRecycle's consideration of these additional comments and requests that the recommendations provided herein be included in the final regulations, recognizing the unique perspectives of various entities within the regulated community.

Sincerely,
Mala Parker
Senior Vice President, Government and Public Affairs

Response to O-9-1

Comment rejected. Regarding the assertion that section 18980.2(a)(2) requires a separate submission for each product, the commenter is incorrect. Section 18980.2(a)(2) does not prevent notices from addressing packaging by "specification family." Subparagraph (A) states that the notice must "specifically describe all packaging and packaging components to be excluded and the associated products." Regarding the request for a "rebuttable presumption," no change is necessary because, as written, that is the effect of subparagraph (C), under which CalRecycle must notify the submitter that the notice is incomplete within 90 days of receipt. Regarding "federal citations and supplier attestation," no change is necessary because nothing in section 18980.2(a)(2) prevents submissions from being considered adequate. The effect of subparagraphs (C) through (E) is that, unless "challenged" by CalRecycle based on incompleteness (subparagraph (C)) or a determination that the notice is not adequately supported (subparagraph (E)), the notice is sufficient to render the packaging at issue not "covered material."

O-10: Mojave Desert and Mountain Recycling Authority (John Davis)

Comment O-10-1

Section 18980.2. Categorically Excluded Materials
The January 29, 2026 revisions introduce the concept that "mandatory regulations, rules or guidelines" may justify exclusion of covered materials. However, unlike other exclusions in the same section there are no specific references to those mandatory provisions. Please identify subsections in the referenced federal statutes establishing mandatory requirements.
Subdivision(a), paragraphs 1, 3, 4, 5 and 6 identifies items that are not covered materials by referencing specific provisions.
(1) Packaging and other items identified in paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code.
(3) Packaging that is "refillable" or "reusable," as defined in subdivision (af) of section 42041 of the Public Resources Code.

(4) Packaging used for "devices," as defined in subsection (h) of section 321 of Title 21 of the United States Code.
(5) Packaging used for "drugs," as defined in subsection (g) of section 321 of Title 21 of the United States Code, that require a prescription pursuant to subsection (b) of section 353 of Title 21 of the United States Code.
(6) Packaging for medical products. "Medical products" means products that are "drugs," as defined pursuant to paragraph (5), that do not require a prescription and satisfy at least one of the following criteria:
(A) They are neither "cosmetics," as defined in subsection (i) of section 321 of Title 21 of the United States Code, nor "soap," as defined in section 701.20 of Title 21 of the Code of Federal Regulations.
(B) They are not a drug solely by virtue of containing a "sunscreen active ingredient," as defined in section 352.3 of Title 21 of the Code of Federal Regulations.
The list of federal statutes at the end of Paragraph 2 do not include specific subsections that create mandatory standards justifying exclusion as covered materials. This is a critical omission as the proposed language creates exclusions based on "mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration."
Paragraph 2 includes specific federal legislation but lacks specific mandatory subsections. Failure to include specific subsections is inconsistent with the rest of this regulation. The threshold for mandatory regulations, rules or guidelines needs to be clarified to provide certainty and avoid protracted technical disputes.

Response to O-10-1

Comment rejected. It is not necessary to include in the proposed regulations a list of "mandatory regulations, rules, or guidelines." Statute itself provides examples (see Public Resources Code section 42060(b)(2), and it is not practical for the proposed regulations to include a comprehensive list. Nor would a comprehensive list necessarily be comprehensive in the future, as new federal laws and regulations may be enacted. Regarding the purported inconsistency with the other paragraphs within 18980.2(a), that inconsistency is non-substantive. Those other paragraphs incorporate terms found in the Act itself and do not concern the open-ended concept of whether a federal requirement conflicts with a requirement of the Act.

O-11: Personal Care Products Council (Bridget Corridon)

Comment O-11-1

The Personal Care Products Council (PCPC) is pleased to submit the following comments on the permanent regulation text for SB 54, Plastic Pollution Prevention and Packaging Producer Responsibility Act (the "permanent regulations"). PCPC member companies are involved in the distribution and sale of over-the-counter nonprescription drug products, cosmetics, toiletries, fragrances, and ingredients in California, and therefore have a strong interest in the rulemaking and implementation of SB 54.

PCPC remains supportive of extended producer responsibility (EPR) programs that allow for stakeholder collaboration to ensure the program is structured for innovation and expanded waste reprocessing. PCPC recognizes and appreciates the ongoing effort by CalRecycle to revise and develop the regulations. However, the permanent regulations, including the limited, technical revisions made in January 2026, do not improve the ability to implement SB 54 and rather impede the goal of SB 54 to improve circularity and recycling in California.

PCPC and its members strongly recommend Cal Recycle consider implementing the following changes to the permanent regulations.

1. Over-the-Counter (OTC) Drug Exclusion (Section 18980.2(a)(6)) is unnecessarily narrowed and not in compliance with the statute.

The statutory text of SB 54 specifically states "covered material" does not include packaging for "[m]edical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1))." California Public Resources Code § 42041(2)(A)(i) (2025). In the regulations, section 18980.2(a)(6) provides an exclusion for OTC drugs, however, the OTC drug exclusion is unnecessarily narrowed by subparagraphs (A) and (B) and is not in accordance with SB 54's statutory language.

State regulators must operate within the boundaries set by the statutes passed by the legislature. Agencies, like CalRecycle, are not directed to create or enforce rules that go beyond or contradict the statute's language or intent. Regulations must be firmly rooted in the enabling legislation, ensuring that implementation remains faithful to the law, is transparent to the public, and does not exceed the scope of authority established by the legislature. This principle safeguards the integrity of the rulemaking process and reinforces the public's trust in government. Unfortunately, sections 18980.2(a)(6) (A) and (B) are not in accordance with plain language of the statute.

The statutory text of SB 54 specifically states "covered material" does not include packaging for "[m]edical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1))." See California Public Resources Code § 42041(2)(A)(i) (2025. This creates three statutory exemptions: medical products, devices, and prescription drugs. The statue also provides three specific citations for the category types that should be excluded: 21 U.S.C. § 321(g), 21 U.S.C. § 321(h), and 21 U.S.C. § 353(b)(1).

First, 21 U.S.C. § 321(h) defines a "device" as any instrument or related article used for similar diagnostic or therapeutic purposes, which does not achieve its primary intended effect through chemical action or metabolism. Next, 21 U.S.C. § 353(b)(1) stipulates that certain drugs must be dispensed only via prescription. Finally, 21 U.S.C. § 321(g), defines a "drug" as any article recognized in official compendia or intended for use in diagnosing, curing, mitigating, treating, or preventing disease, or affecting the structure or function of the body, excluding food unless otherwise specified.

The plain language of the SB 54 statue provides that "medical products" includes those products defined by federal law in 21 U.S.C. § 321(g). OTC drugs are covered by 21 U.S.C. § 321(g) as they are intended for therapeutic use, are regulated by the FDA via a

common statutory framework, and subject to strict safety, labeling, and manufacturing requirements. FDA's classification of these products as drugs ensures that they are already subject to robust lifecycle regulation, including packaging standards, labeling requirements, and facility registration. Although CalRecycle has publicly stated it struggled with defining "medical product," it cannot use the regulatory process as a way to circumvent the statutory text.

Subparagraphs (A) and (B) in Section 18980.2(a)(6) should be removed as they provide an unnecessary restriction on the definition of "medical products." CalRecycle's current interpretation and restrictions on "medical products" contradicts the clear language of SB 54 that was adopted to exclude all nonprescription drugs.

Additionally, maintaining the integrity, safety, and efficacy of OTC products requires packaging that meets rigorous, science-based standards that serve important public health functions and cannot be compromised by secondary considerations. For FDA-regulated OTC products, specific packaging may be essential to ensure the stability of active ingredients throughout the product's shelf life, whether in sunscreens, mouthwashes, or toothpastes. This necessitates robust barriers against moisture and vapor transmission—requirements that cannot be met through conventional plastic reduction methods without violating FDA regulations. Additionally, child-resistant packaging mandated by the Consumer Product Safety Commission under the Poison Prevention Packaging Act imposes further design constraints. These combined regulatory obligations make clear that for OTC products, packaging reduction targets must be approached with caution to avoid undermining essential safety and efficacy standards that protect consumers.

2. Cosmetics are a federally regulated category not granted an opportunity to apply for an exemption pursuant to Section 18980.2 (a)(1)(2).

In the Categorically Excluded Materials Section (18980.2) (a)(1)(2) PCPC requests that CalRecycle add "cosmetic" to expand the determination of exclusion allowance for packaging or packaging components used within the food, agricultural and cosmetic industries. This section selectively favors the agriculture and food and beverage sectors while overlooking other industries subject to equally rigorous safety standards set forth by the FDA. FDA's Modernization of Cosmetics Regulation Act of 2022 (MoCRA) and the European Medicines Agency (EMA) also require microbial testing for cosmetics, including challenge tests to ensure products remain safe under normal use conditions. The cosmetics industry has strict protocols to prevent microbial contamination and ensure the integrity of product packaging. Packaging is fundamentally important in preserving the integrity and efficacy of personal care products. Its role in product protection cannot be emphasized enough.

For example, mascara, a cosmetic, is applied to the sensitive eye area and is susceptible to microbial proliferation. To mitigate these risks, mascara packaging is specifically designed to provide essential protection. It is engineered to be airtight and incorporates wiper systems that significantly limit oxygen exposure and reduce microbial transfer. This protective packaging design is absolutely critical for maintaining the product's hygienic quality and preventing microbial contamination from repeated use. Similarly, spray bottles for sunscreen, setting sprays, and hair styling are designed and used to prevent direct hand contact with the bulk product. This reduces the risk of contamination from airborne bacteria, dust, or particles. Bottles with pump applications

for liquid foundation dispense a precise amount of the product without exposing the remaining contents to the outside environment, further mitigating contamination risks from airborne bacteria, dust, or particles. Airless pumps eliminate air ingress, thereby reducing oxidation and preserving the efficacy of sensitive formulations. Dropped bottles for face oils and serums are designed and used to minimize contact with users' fingers, lowering the risk of microbial transfer. Squeeze tubes with application tips, commonly used in products like acne spot treatment and eye creams, limit product exposure to both consumer's hands and the air. These products are often sealed with tamper-evident caps to ensure product safety and integrity.

Including cosmetics in this subsection allows for the cosmetic industry to work towards incorporating protective packaging designs that align with CalRecycle's goals under SB54, while affording them the opportunity to apply for an exemption, if necessary, to minimize contamination, preserve product stability, and protect consumers.

Finally, PCPC asks that CalRecycle clarify who or what is an "entity" under Section 18980.2(a)(2)(A). As currently written, it is not explicitly clear if an "entity" like a trade association can notify CalRecycle on a producer's behalf.

3. Definition of Plastic (Section 18980.1 (15))

The permanent regulations cite the definition of plastics contained in Section 42041. Public Resource Code Section 42041(t) states

(t) "Plastic" means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches.

PCPC requests that CalRecycle remove or exclude "coatings and adhesives" from the definition of "plastic." Including coating and adhesives in the definition makes it challenging for producers to determine and report for every single package material. Additionally, including coatings and adhesives raises questions on what a plastic component would be and estimating the weight for reporting to the PRO.

4. Inconsistencies and the lack of harmonization between SB 54 and other existing laws create undue burdens on manufacturers and producers.

PCPC and its member companies reiterate that they are supportive of effective and well-designed EPR laws. Cosmetic products and OTC drugs are distributed worldwide and harmonization across states is crucial to reduce confusion and encourage the use of recyclable materials in products. The rapidly expanding framework of EPR laws both nationally and internationally, like the Packaging and Packaging Waste Regulation in Europe, will result in many more producer reporting categories, making compliance significantly more complex and costly for producers. Furthermore, without significant changes, the lack of harmonization with other states and other California laws will create obstacles that inhibit reasonable compliance and stifle innovation.

The existing patchwork of EPR laws in several states poses a significant challenge for manufacturers operating with a global supply chain - PCPC is concerned with the

compliance challenges imposed on companies with SB 54, and California's SB 343 ("Truth in Labeling" law) will exacerbate these issues. Recycling compliance in California is nearly impossible because California has passed two recycling laws that are complex, confusing, unharmonized, and in some instances, directly conflicting. The implementation of both laws has resulted in two separate covered material category lists regarding the recyclability of packaging in the state of California. SB 54 requires that by 2032, 100% of packaging is recycled or compostable in the state. Producers must consider both the SB 54 and SB 343 recyclable list and as these lists do not work in harmony, there will be limitations on what materials can be considered recyclable and thus sold in the state of California. For example, SB54 classifies the material types differently than SB343. SB343 categorizes glass into categories based on form and color, whereas SB54 classifies glass into categories based on form and size. As another example, the SB343 study indicates that 75% of California's population has access to recycling facilities that accept LDPE clear beverage bottles and 73% accept LDPE clear single-use rigids. However, the SB 54 assessment indicates these containers as not recyclable.

Compounding this, the 2025 Final Materialization and Characterization Study from SB 343 does not contain a final summarized report of what is considered recyclable in the state. Moreover, we also understand that CalRecyle is taking the position that its Final Materialization and Characterization Study does not provide binding guidance to industry on what can/cannot be labeled as recyclable. This makes it challenging and confusing for manufacturers, producers, and ingredient suppliers to assess their own packaging. Since CalRecycle's published SB 343 list is not definitive and thus subject to multiple interpretations, producers face the risk of increased litigation despite their well-intentioned efforts to comply with the regulation, especially when coupled with a lack of clarity from CalRecycle on enforcement dates. At a minimum, CalRecycle should analyze and harmonize its own data and report its conclusions on what is recyclable based on its own criteria outlined in SB 343 and SB 54.

5. Source Reduction

a. Establishing common-sense compliance measurement periods for source reduction (§18980.9.1) provides certainty for producers.

Neither SB54 nor its permanent regulations specify the reporting period to be used for measuring compliance against the source reduction requirements. It is imperative that producers know now when the compliance will be measured to understand what they must do to comply. PCPC proposes adding language to paragraph (2) of subdivision (d) to specify that source reduction requirements that are required as of January 1, 2027, 2030, and 2032, are based on producer source reduction reporting using the measurement period of the respective calendar years of 2027, 2030, and 2032. Considering the lack of final regulations, finalized Covered Materials Categories (CMC) material description guidance, and an approved Producer Responsibility Organization (PRO) plan, producers do not and will not have the information necessary to implement source reduction compliance any earlier than calendar year 2027. Without finalized regulations and related guidance, producers cannot begin to implement packaging changes. Once the regulations are final, producers still need sufficient lead time to develop, test, and implement packaging changes.

b. Source reduction plan should allow for adjustment factors based on sales growth

The wholesale deletion of Section 18980.8.3 removes the PRO's express ability to utilize important, common sense adjustment factors in the development of its source reduction plan. The deleted section included adjustment factors for fluctuations in economic conditions and the change in number of producers participating in the PRO plan. This section should be restored, and PCPC proposes adding a third common sense adjustment factor for the PRO to incorporate into its source reduction plan: adjustments for product sales and company growth over time.

The adjustment factors in the deleted text protect against arbitrary shifts in economic conditions or the number of producers participating in the PRO plan. For example, without these adjustment factors, an economic decline that results in lower consumer consumption in a reporting year may result in the PRO achieving its source reduction targets without any producer changes to packaging.

PCPC's proposal to add a third adjustment factor to account for product sales growth over time allows the PRO to incorporate producer reporting of sales adjusted material usage into its source reduction plan to normalize for business growth. Without such an adjustment factor, the permanent regulations penalize sales growth by disproportionately forcing producers with growing sales to reduce plastic usage to compensate for additional products sold. An adjustment for sales growth ensures that a large, steadily growing company like many of PCPC's members, who may be doing everything possible to source reduce its packaging for individual products, is not subject to anticompetitive standards that require them to meet more rigorous requirements than a company with stagnant or declining sales. If kept as written, this potentially requires growing companies to cease or even reverse their sales growth in California to meet absolute source reduction requirements. A sales growth adjustment decouples growth from plastic usage long-term, thereby enabling fair and robust competition among businesses in California and allowing businesses whose innovation is rewarded by California's consumers to grow in the California market by focusing on source reduction by product sold versus absolute source reduction.

PCPC proposes restoring §18980.8.3 and adding the following language to §18980.8.3(a):

Subject to the limitations of this section, a source reduction plan developed pursuant to subdivision (f) of section 42057 of the Public Resources Code may utilize adjustments factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO plan *and must utilize adjustments factors and methods to allow producer reporting of material usage to be adjusted by units of sale to normalize business growth over time, in each case* for determining whether the PRO has met its source reduction obligation relative to the baseline established by the Department under subdivision (b) of section 42057 of the Public Resources Code.

c. PCR Certification (§18980.3.4)

SB 54 specifies that producers may apply for a source reduction credit up to 8% through an alternative compliance formula that offers source reduction credit "on a sliding scale based on the ratio of virgin plastic to postconsumer recycled content plastic to producers who incorporate postconsumer recycled content into plastic covered material." Paragraph (1) of subdivision (b) of Section 18980.3.4 of the permanent

regulations requires that the PRO measure the increase in absolute amount of postconsumer recycled content (PCR) used versus a 2023 baseline.
Many producers began incorporating PCR into packaging decades ago and had achieved significant amounts of PCR usage by 2023. Measuring producers' absolute volume increase of PCR based on a 2023 baseline does not recognize, and in fact penalizes, the proactive sustainability efforts of producers who voluntarily took early action to incorporate PCR into plastic packaging prior to 2023. Additionally, companies that have been doing source reduction for years may not be able to do additional source reduction and have the product remain fit for purpose. This also may prevent the PRO from being able to claim the full 8% source reduction credit. Necessarily, due to PCR already incorporated prior to 2023, the ability to incorporate more is limited. PCPC suggests the credit be applied to current levels of PCR use and not just increases from 2023.
6. Restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling.
PCPC recommends CalRecycle restore recognition of physical recycling technology as an acceptable responsible end market technology, in addition to mechanical recycling. CalRecycle has previously recognized physical recycling in earlier draft versions of the permanent regulations.
Physical processes can be operated in tandem with mechanical processes to vastly improve the quality of output. This broadens the potential applications for recycled plastic and promotes continued circularity in similar types of applications, helping to reduce the amount of plastic that is downcycled.
Additionally, advanced recycling is a critical component of plastic packaging circularity, recovering it as a raw material at scale which can be utilized in high-quality plastic packaging that adheres to strict quality regulations for direct food contact and medical applications. Further, mechanical recycling can effectively sort some plastic polymers, such as HDPE and PET, but is less suited to address other categories of plastic waste. Advanced recycling technologies should complement mechanical and physical recycling processes by providing a sustainable end of life for a variety of difficult to recycle plastic materials, including low-density plastics such as films and flexibles
By unnecessarily restricting and limiting certain recycling technologies, the permanent regulations will inadvertently hamper the very goal SB 54 seeks to achieve-building a circular economy-by disincentivizing innovation, banning the use of future innovations in those technologies, and reducing the volume of recyclable material entering the system.
7. SB 54 permanent regulations text on detachable components and small format packaging should align with the Association of Plastic Recyclers Design Guide and not arbitrarily penalize producers for using a small, but otherwise recyclable, component.
a. Detachable Components
In the permanent regulations language was added §18980.1(a)(40(C)(ii) to specify that a "detachable component" is defined by certain characteristic "regardless of whether the component is discarded attached to the other components." This additional language negatively impacts the recyclability determination for components that are made of recyclable material but are less than two inches by two inches in size, which on their own would not currently be considered recyclable due to their size but would be considered recyclable when reattached to the larger recyclable packaging. Additionally,

this language is directly contrary to the Association of Plastic Recyclers (APR) Design Guide, which recommends leaving plastic caps on bottles and containers when recycling.

APR specifically advocates that consumers reattach caps and lids prior to disposal. Doing so increases recyclability, enabling the plastic in the caps and lids to be recovered and recycled when they otherwise might be inaccurately sorted as small parts or other materials in processing, resulting in their disposal rather than recovery. APR also notes that reattaching lids prior to disposal reflects consumer practices, increasing compliance with recycling by making it easier to properly dispose of waste. By requiring that reattached caps and lids are treated separately for categorization, the permanent regulation contradicts the approach set out by APR, preferred by recycling facilities, and adopted by consumers. This approach does not reflect actual collection and recycling practices and undercounts the amount of recycled material. Caps and lids that are, in fact, recycled attached to bottles would be artificially categorized as non-recyclable small parts or non-recyclable materials. By artificially undercounting certain recycled materials, the system is likely to disincentivize designs and practices that would increase recycled material and would result in an inaccurate recycling rate for these materials. Taking a position contrary to the APR Design Guide, as the permanent regulations do, negatively impacts both the calculation of actual recycling rates for components and the recyclability determination for components in a way that does not match current recycling practices.

For the calculation of actual recycling rates for components, under the permanent regulations a recycling rate is calculated using the covered material category applicable to each component standing on its own, regardless of whether the component is designed to be reattached to the primary packaging. The APR Design Guides instruct components to be reattached, so current material recovery facilities process the packaging as a whole and sort it into a single recycling stream. Understanding this guidance, a single recycling rate should be calculated for the covered material category applicable to component and the packaging to which it is reattached. PCPC proposes adding language to Section 18980.1. and Section 18980.3.2. to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.

Finally, when recycling is made easier, participation in recycling programs increases. Consumers have already adopted the habit of keeping caps and labels on packaging before disposal after years of education to increase the practice, and it would be counterproductive to change this approach now given the high recovery rate of attached caps and labels by material recovery facilities. To ensure the correct recyclability determination of components that are intended to be reattached to a recyclable packaging, PCPC proposes adding language to Section 18980.1 to ensure that such components are properly considered together with the packaging to which they are designed to be reattached prior to disposal.

b. Small Format Packaging

PCPC has consistently advocated for clarification on the recyclability of small packaging (two inches by two inches). Packaging plays a vital role in ensuring the safety of cosmetic products as discussed earlier. It is the first critical step to protecting product formulas from contamination and degradation. Packaging material and structure are

critical to maintaining product integrity. Material selection, including small packaging, is dependent on "fit for use," a metric that determines the effectiveness and functionality of a packaging material. Plastics specific to cosmetic and personal care products provide benefits that other types of packaging materials may not be able to achieve and do not pose the hazard and environmental issues caused by other materials. Companies must consider a wide variety of technical specifications when determining packaging designs, including helping consumers dispense and apply products appropriately, continuing to overall consumer safety and satisfaction, often resulting in smaller packaging. Increasing minimum size thresholds or restrictions may disproportionately affect cosmetic brands, especially those already investing in recyclable designs.
For recyclability determinations for components that are less than two inches by two inches in size may not be considered recyclable due to their small size and current processing limitations with material recovery facilities. However, these same components are recyclable when designed to be reattached to the larger recyclable packaging, pursuant to APR Design Guides.
In the Draft Covered Material Categories Reporting Guidelines, released in June 2025, CalRecycle included a "size sorting potential" assessment for small packaging which referenced the APR Design Guide as a technical standard. This incorporation is both appropriate and aligned with best practices, as the APR Design Guide reflects the operational realities and equipment capabilities of modern materials recovery facilities (MRFs). Specifically, this methodology provides a function-based assessment of sortability, accounting for packaging form and construction, rather than relying solely on arbitrary physical dimensions such as size thresholds. By considering the actual performance of materials within automated sortation systems, this approach enables a more accurate classification of covered materials based on their real-world potential for recovery and market viability.

PCPC encourages CalRecycle to formally adopt and consistently apply the APR design guide standards throughout the implementation of SB 54. Doing so would promote regulatory clarity, incentivize packaging design for recyclability, and reduce the risk of misclassification that could limit the capture of recoverable materials. The use of technically grounded and operationally validated criteria—such as those found in the APR Design Guide—is essential to ensuring that the regulatory framework supports both environmental outcomes and practical feasibility for producer. The cosmetic and personal care product industry is directly impacted by the recyclability determination of small packaging, as many products fall into this category (lipstick, eyeliners, mascara, etc.). If the covered material list states and the regulations penalize small packaging by either declaring they are potentially not recyclable or not providing exemptions, then by 2032 numerous cosmetic and personal care product producers will not be able to sell these products into the state of California.

Small-format categorization should reflect current best practices in recycling design. Where small packaging can be demonstrably sorted and captured, the regulations should allow a performance-based pathway rather than relying solely on dimensional cutoffs. The Association of Plastic Recyclers’ SORT-S-02 “sorting potential” method provides a validated procedure to assess capture of small items. If CalRecycle intends

the defining criterion to be functional performance in MRFs, SORT-S-02 is the appropriate test to determine inclusion of small packaging that can be sorted and recovered. CalRecycle should incorporate use of SORT-S-02 in the regulations, for example in Section 18980.2.5, so that small items proven sortable can be deemed recyclable and categorized into the appropriate CMCs. This approach improves capture, aligns with technological advances in sortation, and avoids excluding sortable items based solely on size.

Conclusion

PCPC appreciates the opportunity to provide feedback on the permanent regulations for SB 54. We look forward to continuing to engage with CalRecycle to support the success of SB 54 implementation. We welcome the opportunity to discuss our comments and share relevant information with CalRecycle.

Response to O-11-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-12: Nixon Peabody LLP (Alison Torbitt)

Comment O-12-1

On behalf of a large, non-profit, faith-based, charitable organization that operates in California, we are providing comments on CalRecycle's proposed regulations to implement California's Plastic Pollution Prevention and Packaging Producer Responsibility Act ("SB 54") ("Proposed SB 54 Implementing Regulations" and "Proposed Regulations"). We remain supportive of California's important efforts to develop an effective Extended Producer Responsibility ("EPR") framework that helps to reduce plastic pollution and promote a circular economy.

However, we respectfully raise concerns about unequal impacts and several unintended consequences the Proposed Regulations may pose for charitable, faith-based, and other nonprofit organizations that distribute consumer product goods and food products to individuals and families in need. Nonprofits already face significant operational strains, high compliance burdens, and reduced resources. Adding EPR requirements creates unequal impacts, further minimizing the benefits these nonprofits provide to vulnerable populations. Without targeted clarifications and adjustments in the final rule set, CalRecycle's EPR framework could inadvertently undermine charitable programs, impose disproportionate compliance burdens, and divert resources from humanitarian missions that provide vital support to California's most vulnerable communities.

1. The Small Producer Exemption is Insufficient to Exempt or Accommodate Larger Nonprofit and Charitable Organizations Under SB 54

In enacting SB 54, California's Legislature sought to impose EPR responsibilities broadly on entities with the greatest control over products and their associated packaging.1 Reflecting this intent, SB 54 has limited producer exceptions and identifies a single express exemption for "small producers," in language stating "the department shall exempt producers, retailers, or wholesalers that, in the most recent calendar year, had gross sales of less than one million dollars ($1,000,000) in the state."2

CalRecycle's Proposed Regulations adopt a similarly restrictive approach.3 To qualify as a small producer, an entity must submit an application to CalRecycle demonstrating that its gross sales for the most recent calendar year fell below the $1,000,000 threshold.4 "Gross sales" is defined broadly to include all revenue from business activity conducted in California, not just sales of products containing covered materials.5 This includes retail, wholesale, online, and in-person transactions, as well as other California-based revenue streams. Applicants must also provide detailed supporting documentation (e.g., tax returns, financial statements, or sales reports) to verify their California-specific gross sales.6 If granted, the exemption relieves the producer of EPR obligations for a two-year period, subject to reapplication and updated sales documentation showing maintained eligibility. However, if a producer's California gross sales exceed $1,000,000 at any point, the exemption is immediately revoked, and full compliance is
required.7

While this framework is designed to ensure that each covered material has an identifiable, responsible producer, the absence of any exemption or tailored accommodation for charitable, nonprofit, and faith-based organizations presents significant challenges. As currently drafted, the regulations risk subjecting large-scale charitable, nonprofit, and faith-based organizations to the same compliance burdens as major commercial producers, without regard to the fundamental differences in their missions, operating structures, and packaging control.

In particular, the generalized definition of gross sales creates unique difficulties for large charitable organizations. Many such organizations operate at significant scale, distributing food, hygiene products, clothing, and other essential items to Californians in need but do so free of charge or at nominal cost. The first difficulty in assuming that all charities will fall within the small producer exemption is given California's significant population of 39+ million persons, charitable distributions at a nominal or de minimis cost to 39+ million persons can potentially result in "gross sales" over the $1 million threshold, despite no or negative profit to the charity. The second difficulty relates to the definition of "gross sales," as it may include the aggregate value of goods being donated. Either of these difficulties alone may result
in these organizations inadvertently exceeding the exemption threshold despite engaging in noncommercial,
humanitarian activity. In such cases, high volumes of charitable activity, not business income, could trigger compliance requirements under SB 54.

As yet a third difficulty, nonprofit, and charitable distribution models differ significantly from those of commercial retail and food service establishments. Nonprofit and charitable organizations, particularly faith-based entities, may produce food products or receive donated consumer products, which are then distributed at no or de minimis cost through humanitarian channels to underserved populations. These products may contain packaging that qualifies as “covered material” under the statute, but the nonprofit entity likely had no role in designing, sourcing, or selecting that packaging. The organization acts solely as a conduit, ensuring the goods reach individuals in need.

Assigning producer responsibility to nonprofit entities in such circumstances is inconsistent with SB 54’s legislative intent, which is to place environmental accountability on the entities that have decision-making authority over packaging choices and material composition. Imposing EPR obligations on these organizations will also divert resources from charitable missions, while also failing to further the Act’s core environmental objectives. For these vary reasons, several other states with EPR programs recognize the unique role of charitable organizations and explicitly exempt them from EPR producer obligations. For instance, Maine expressly excludes 501(c)(3) nonprofit organizations from the definition of a "producer," thereby exempting them from the state's EPR requirements.8 Similarly, Colorado’s EPR statute identifies nonprofit organizations as exempt producers,9 and Oregon includes an exemption for nonprofit organizations within the regulatory definition of “small producer” regardless of that nonprofit’s gross revenue.10

In California, the potential adverse impact of reporting requirements on nonprofit organizations has also been acknowledged in other regulatory contexts. The California Air Resources Board, for example, has proposed exempting nonprofits from the greenhouse gas (“GHG”) emissions disclosure requirements under Senate Bill 253, and the climate-related financial risk disclosure requirements under Senate Bill 261.11

Notably, these exemptions are being considered despite the absence of explicit statutory carveouts for nonprofits—underscoring a broader recognition of the disproportionate burden such requirements could impose on mission-driven organizations. These regulatory approaches reflect a consistent intent to protect charitable and nonprofit entities from obligations that could divert resources from their core mission and public service objectives.

To ensure SB 54 is implemented in a manner that is both equitable and consistent with its statutory purpose, we recommend that CalRecycle establish a specific exemption or alternative compliance pathway for charitable, nonprofit, and faith-based organizations that distribute goods free of charge or at nominal cost for charitable purposes, regardless of gross sales volume. Such an exemption should apply where the organization is not involved in the production or packaging decision-making process and is either a distributor of donated or humanitarian aid items or is providing items to individuals in need either free of charge or at a de minimis cost.

2. EPR Obligations Should Not Deter Donation Programs

The Proposed Regulations adopt a multifactorial approach to identifying the “producer” responsible for EPR compliance.12 This approach considers a range of factors, including whether the covered material is branded or unbranded, whether it is subject to licensing or intellectual property rights, and the physical location of the manufacturer, brand owner, or licensee. Where no producer can be clearly identified through these criteria, the regulations assign responsibility to the importer or distributor of the material into California.13

While this framework may function in conventional commercial settings, it does not account for the distinct operational realities of nonprofit and faith-based organizations engaged in charitable sales or distribution. These organizations, particularly those with multi-state operations, often rely on complex and donation-based supply chains that differ substantially from traditional manufacturing and retail models. Donated goods, such as hygiene kits, food items, clothing, and emergency supplies, may be produced in one state, stored in another, and ultimately sold, either at reduced or de minimis costs, or freely distributed in California by nonprofits or charitable organizations serving vulnerable populations. These goods frequently pass through a series of non-commercial transfers, with separate entities responsible for manufacturing, repackaging, storage, and transportation at distinct stages of the supply chain. For example, a national nonprofit may receive hygiene kits assembled and packaged by volunteers in one state, which are then collected and shipped in bulk to California and then distributed by various local partners to people in need either for free or at minimal cost.

Crucially, in these models, the nonprofit or faith-based organization that ultimately distributes the goods in California may have no control over packaging design or material selection and similarly may have no legal or commercial relationship with the upstream entities responsible for those decisions. In some cases, additional packaging may also be applied, or the packaging may be modified throughout the supply chain, such as during bulk shipment or localized repackaging, to facilitate final distribution to individuals in need.

Given this operational structure, the fact-intensive nature of the producer identification process and default to the last entity selling or distributing a product with covered material poses a significant compliance burden for charitable organizations. These entities are often unable to trace or verify the origin, branding, or material content of donated packaging, nor are they positioned to assume producer responsibilities under the framework envisioned by SB 54. Nonetheless, under CalRecycle’s Proposed Regulations, nonprofits may be deemed the “producer” solely because they are the final entity to handle, sell, or distribute the product within the state. The lack of clarity surrounding the Proposed Regulations’ definitions of “producer” and “covered material” within the donation and charitable sales context further exacerbates this challenge. Without explicit exemptions or tailored compliance pathways for nonprofit and charitable organizations, or clear considerations for donated items, charitable organizations face substantial regulatory uncertainty. The prospect of

being deemed a producer could also discourage participation in donation-based programs or lead to the reduction or elimination of critical aid operations in California.

The potential impact of these regulations is not theoretical. Many nonprofit organizations operate on limited budgets, rely heavily on volunteer labor, and prioritize service delivery over administrative infrastructure. Imposing the full weight of SB 54 compliance on such organizations may result in significant financial and operational strain. This could, in turn, diminish the availability and reach of charitable assistance, particularly at a time when demand for such services remains high due to ongoing social, economic, and environmental pressures. It is essential that CalRecycle recognize the substantial public benefits these programs provide to Californians. Faith-based and nonprofit organizations are vital
partners in delivering food security, disaster response, hygiene services, and other forms of emergency and humanitarian assistance. Ensuring that SB 54 implementation does not inadvertently undermine these services will be critical to advancing both environmental and social equity objectives.

Footnotes:
1 See Senate Bill No. 54; Cal. Pub. Resource Code § 42041(e). See also generally, Senate Bill No. 54 Bill Analysis, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54. However, SB 54 also excludes from the definition of "producer" any person who produces, harvests, and packages an agricultural commodity on the site where it was grown or raised. See Cal. Pub. Res. Code § 42041(w)(4).
2 See Cal. Pub. Res. Code § 42060(a)(5).
3 See 14 CCR § 18980.5.2 (Proposed).
4 See Cal. Pub. Res. Code § 42060(a)(5)(A);14 CCR § 18980.5.2(a)(1)(Proposed).
5 See 14 CCR § 18980.5.2 (Proposed).
6 See 14 CCR § 18980.5 (Proposed).
7 See 14 CCR § 18980.5.2(c) (Proposed).
8 See Maine PL 2021, c. 455, §2.
9 See Colorado's Extended Producer Responsibility (EPR) law (HB 22-1355), § 25-17-713.
10 See ORS 459A.863(32); Oregon Administrative Order No. DEQ-20-2024.
11 See e.g., SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance, CARB (Aug. 21, 2025), https://ww2.arb.ca.gov/sites/default/files/2025-08/SB%20253%20261%20workshop%20slides%208-21.pdf.
12 See 14 CCR §18980.1 (Proposed).
13 See 14 CCR § 18980.1.1 (Proposed).

Response to O-12-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-12-2

3. Increased Reporting Requirements Harm Non-Profit Agricultural Commodities

The Proposed Regulations introduce a written notification process requirement for those food and agricultural commodities already subject to multiple mandatory regulations, rules, or guidelines to prevent microbial contamination or to maintain the safety or structural integrity of packaging under the Food, Drug, and Cosmetic Act; the FDA Food Safety Modernization Act; the Poultry Products Inspection Act; the Federal Meat Inspection Act; the Egg Products Inspection Act; and other applicable mandatory food or agricultural regulations, rules, or guidelines. These notices will be subject to a determination as to acceptability and posted on the CalRecycle website.

Nonprofit food and agricultural commodities are providing a crucial public benefit, feeding those who cannot afford healthy, sustainable food. These nonprofits are filling a very important gap, shaping a healthy, sustainable future for employees they hire, communities they feed, and the land and natural resources they steward. Adding additional notification requirements on these already administratively burdened nonprofits will result in less healthy, sustainable food provided to those who need it the most.

Response to O-12-2

Comment rejected. Without a notification requirement, every entity could ignore the law based on their own understanding of whether packaging is entitled to be excluded from the Act, with no mechanism for CalRecycle to assess the merit of that understanding. Moreover, the notification requirement in section 18980.2(a)(2) is minimally burdensome. It only requires those that believe certain packaging should be excluded from the Act's definition of "covered material" to notify CalRecycle of that belief and substantiate it. The database of exclusions, required under 18980.2(a)(2), will also mitigate the burden because it will be publicly available and a ready means for identifying packaging that is not "covered material." It will also be a resource for identifying conflicts between federal requirements and the Act and for identifying packaging that CalRecycle has determined to be properly excluded through the process described in subparagraph (E).

Comment O-12-3

4. Reporting Metrics Do Not Fit Charitable Models

The Proposed Regulations require producers to report detailed metrics, including sales volume, market share, and material types, as part of their compliance obligations. These metrics are structured for conventional commercial supply chains and are fundamentally misaligned with nonprofit and humanitarian distribution models. Unlike commercial entities, nonprofit organizations often do not track the movement of goods using sales-based metrics. Donations are distributed at minimal costs or free of charge and are typically not accompanied by transactional data systems designed to monitor

packaging materials, weight, or composition in the manner contemplated by the regulations.

Moreover, nonprofit entities, especially those operating at scale and across multiple states, may not have access to upstream packaging information, and frequently do not control the selection, design, or labeling of the products they receive. As such, they are not positioned to collect or report the kind of granular packaging data required by SB 54's implementing framework. Imposing these requirements on charitable organizations would create significant administrative burdens, without yielding the type of actionable or accurate information the statute seeks to capture.

It is important to recognize that charitable and faith-based organizations are already committed to environmental stewardship as an integral part of their humanitarian missions. Many have adopted voluntary sustainability practices, including responsible sourcing, waste reduction, and packaging minimization, as a matter of principle. These organizations function as responsible partners in both environmental and social welfare, serving populations that often fall outside the reach of traditional commercial infrastructure. Imposing additional administrative and financial requirements—such as registration, detailed reporting, and Producer Responsibility Organization ("PRO") fees—would necessarily divert limited resources away from charitable programs and toward regulatory compliance and would not necessarily improve packaging material outcomes in this context.

Every dollar spent on compliance is a dollar not spent on food, shelter, hygiene, or emergency relief for California residents in need. At a time when economic and environmental pressures are increasing demand for aid, it is critical that California's EPR framework support, not undermine, the delivery of these essential services. We therefore encourage CalRecycle to revise the Proposed Regulations in a way that alleviates the compliance burden and administrative on nonprofit and charitable organizations to ensure they are able to continue distributing goods to populations in need in California and can focus their resources on supporting vulnerable populations.

5. Requested Clarifications and Adjustments

To address the concerns outlined above and preserve the integrity of California's nonprofit and faith-based relief programs, we respectfully request the following clarifications and regulatory adjustments:

- Exempt Nonprofits and Offer Alternative Compliance Pathways. CalRecycle should explicitly exempt nonprofit, charitable and faith-based organizations from producer designation. Alternatively, at a minimum, CalRecycle should also develop alternative compliance pathways with reduced or waived fees and reduced reporting requirements for nonprofit , charitable and faith-based entities that do not generate profit from the sale of covered materials or lack control or access to upstream packaging data.

- Provide Clarification of EPR Requirements for Donated Goods and Charitable Distribution. CalRecycle should also confirm that goods distributed free of charge through nonprofit or charitable channels are exempt from producer designation under SB 54, particularly when no commercial transaction occurs. This approach is consistent with the charitable exemptions adopted in other states' EPR programs. In doing so, CalRecycle should clarify that the distribution of donated goods does not, in itself, trigger producer responsibilities, especially where the distributing non-profit or charitable entity is not engaged in the production, branding, or commercial sale of the item.
- Consider the Environmental Contributions Already Made by Nonprofit Organizations. CalRecycle's EPR Program and regulations should acknowledge the value of nonprofit organizations' voluntary sustainability initiatives, including the benefits of donation pathways in meeting goal EPR objectives, and avoid duplicative or excessive reporting compliance obligations that offer minimal additional environmental benefit and may inadvertently result in decreased charitable support for those in need.
- Producer Assignment Flexibility. In cases where multiple entities may be involved in the provision or distribution of donated goods, CalRecycle should allow for flexible producer assignment and explicitly permit nonprofits and charitable organizations to assign producer responsibility to upstream commercial entities.
- Grace Period and Technical Assistance. Nonprofits should be provided with a reasonable grace period before enforcement of any applicable obligations, along with access to technical assistance and guidance materials designed specifically for the charitable sector.

We urge CalRecycle to ensure that SB 54 implementation supports both environmental and humanitarian goals, preserving the capacity of nonprofits to serve California's most vulnerable residents. Clarifying exemptions, creating flexible compliance options, and supporting nonprofit participation in a manner consistent with their missions will ensure SB 54 is implemented in an equitable and effective manner.

We remain committed to supporting the successful implementation of SB 54 and believe that clarifying these foundational issues is essential to a fair, effective, and sustainable program. We welcome continued engagement on these matters through public meetings or direct dialogue with CalRecycle to help shape a regulatory approach that aligns with SB 54's intent and supports long-term success.

Response to O-12-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-13: Natural Resources Defense Council (NRDC) (Renee Sharp)

Comment O-13-1

The Natural Resources Defense Council (NRDC) respectfully submits the following comments in response to CalRecycle's Proposed Permanent Regulations (dated January 2026) for SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

Thank you for your consideration of our comments as detailed below.

ARTICLE 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials
(a)(2), (a)(2)(A), and (a)(2)(B): We are pleased to see proposed changes in this section that appropriately help narrow the exclusions from "covered material" so that they are focused only on federal mandates where preemption attaches, such as the use of the word "mandatory" throughout. We also support the changes in section (a)(2)(B), outlining the showing that entities must make if they are seeking exclusions from "covered material" on the grounds that there is a conflict with federal law.

However, these improvements are potentially undercut by language in subsequent proposed sections.
(a)(2)(C), (a)(2)(D), and (a)(2)(E):
One critical component that is missing is the timeframe for the exclusions. As it stands, it appears that once packaging or packaging components have been deemed excluded from the scope, that exclusion does not expire. Since it is likely that both policy and technology will continue to evolve, entities requesting exclusions should be required to reapply every two years with Department review. Without such a provision, the regulations could potentially artificially lock in current technologies and would fail to evolve with innovation.

In addition, the proposed regulations could potentially be read to create a gap in coverage that SB 54 clearly does not contemplate. Other than the explicitly listed exclusions, no packaging is excluded from SB 54's ambit unless coverage of certain packaging or packaging components is preempted by federal law. However, the proposed language in section (a)(2)(E) could potentially be read to make it elective for CalRecycle to assess the adequacy of the preemption showing made by an entity seeking an exclusion.1

SB 54 does not provide discretion to the Department to expand the scope of exclusions—failing to adequately assess a claim of exclusion would effectively do just that; this would exceed the Department's authority. We recommend that CalRecycle add language to make clear that it will make a determination of the adequacy of a request for exclusion based on preemption and in a reasonable time frame. Moreover, no request for exclusion should become a *de facto* exclusion via CalRecycle's indefinite

inaction on the request, as the current language in section (a)(2)(D) and (a)(2)(E) could be read to permit. The agency should clarify that that is not the case.

Finally, in the proposed completeness review for a submission seeking exclusion, the language currently overlooks an assessment of the legal adequacy of preemption claims that do not require a factual inquiry. This inquiry should be included in the regulatory language and should lead to prompt action; if there is no legal conflict *per se*, then further fact finding is not necessary and the determination should be made as part of the completeness review.

On a related but separate note, the current proposal provides 60 days for a response to a request for additional information from the Department and then provides an additional 60 days if the Department notes a failure to respond. This rewards potentially bad behavior (i.e., a failure to respond to CalRecycle's request for information). The additional time for response should be shortened considerably and should not exceed 30 days.

To address the concerns outlined above, we propose the following changes, with our recommended changes identified in underline and strikeout in red:

(C) Upon receipt of the notice, the Department shall confirm that the notice is for a food or agricultural commodity and that it contains all elements described in subparagraph (B). If the notice does not contain all such elements or if the Department identifies packaging or packaging components that the notice did not address but that would avoid the cited conflict, the Department shall notify the entity within 90 days of receipt of the notice that the notice is incomplete and requires resubmission pursuant to subparagraphs (A) and (B). If the Department determines that there is no legal conflict irrespective of the availability of alternative packaging or packaging components, the Department shall notify the entity submitting the notice that the packaging or packaging component does not qualify for the exclusion within 90 days of receipt of the notice.

(D) The Department shall maintain on its website a publicly available electronic database identifying each complete notice, including the packaging or packaging components and associated products identified in the notice, the date the notice was deemed complete, and the status of any review of the notice by the Department. Packaging or packaging components identified in the database shall be deemed not covered material unless and until the Department makes a determination pursuant to subparagraph (E) that the notice and any additional information submitted pursuant to that subparagraph fail to demonstrate that the packaging or packaging components qualify for the exclusion. However, if the deadline for the Department's determination pursuant to subparagraph (E) has passed before such a determination is made, then the packaging or packaging components are deemed to be covered material.

(E) The Department shall determine whether the packaging or packaging component qualifies for the exclusion within 180 days of receiving a notice from an entity. At any time, the Department may request from an entity additional information supporting that

entity's determination, which must be provided within 60 days. If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity, which shall respond within ~~60~~ 30 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Department shall determine whether the notice and additional information have demonstrated that each packaging or packaging component qualifies for the exclusion. If the Department determines that the notice and additional information fail to demonstrate that certain packaging or packaging components identified in the notice qualify for the exclusion, the Department shall notify the entity via email and update the database accordingly. Those packaging or packaging components shall then be considered covered material 180 days following such notification. If the Department determines that packaging or packaging component qualifies for the exclusion, the Department shall notify the entity via email. That exclusion shall expire two years from the date of the notice. The entity may resubmit a notice of exclusion, subject to subparagraphs (A) through (G), to the Department at that time with updated information reflecting any market developments.

Footnotes:
1 Under the proposed language, the agency "may request" additional information. Only "following review" of
information obtained from the request and consultation with other agencies, the agency "shall determine" if the
preemption showing has been made. This could be read to imply that the agency need not make the determination
if it does not request additional information. But as discussed further above, the agency does not have the discretion to expand the scope of preemptive effect.

Response to O-13-1

Comment rejected. CalRecycle rejects the suggestion to add a specific time limitation for the reasons set forth in response to comments O-25-2. CalRecycle's initial review and ability to review notices pursuant to section 18980.2(a)(2)(E) reasonably prevent packaging from remaining excluded despite advances in innovation.
Regarding expansion of the scope of exclusions, section 18980.2(a)(2) does not contradict the statute or exceed CalRecycle's authority. Under Public Resources Code section 42060(b)(1), regulations must "consider guidelines and . . . not conflict with regulations," and under section 42060(b)(2) CalRecycle must not impose requirements "in direct conflict with a federal law or regulation." That statutory text does not impose the strict limitations that the commenter asserts it does related to federal preemption. The Act allows consideration of the various federal requirements placed on certain packaging and requires regulations to mitigate the risk that the Act, when combined with those federal requirements,

could create untenable challenges for food and agricultural packaging. Importantly, those consequences are much broader and more significant than legal restrictions on producers or packaging manufacturers directly. The consequences also relate to the legality and cost of food packaging in the state, the availability of food in the state, and increased food costs. That range of consequences counsels patience and caution with respect to the potential for regulations to require packaging manufacturers and producers to develop or transition to new packaging on timelines that may not reflect operational limitations, technical challenges and uncertainties, and procedures required under federal law. Section 18980.2(a)(2) properly exercises CalRecycle's discretion over how most efficiently to implement and enforce the Act while avoiding such downside risks by first subjecting notices to a review confirming that they identify legal conflicts and address known packaging that might avoid it, and then subjecting all excluded packaging to CalRecycle's ongoing scrutiny pursuant to subparagraph (E). That process is not "elective" and adequately enables CalRecycle to assess the adequacy of notices as packaging innovation advances.

Regarding the potential for notices not to require a factual inquiry, no change to section 18980.2(a)(2) is necessary. If a notice fails to identify "mandatory federal regulations, rules, or guidelines that are in conflict," it will fail to contain all that subparagraph (B) requires and can be deemed incomplete.

Regarding the periods for responding to CalRecycle's request for additional information, CalRecycle declines to shorten it to 30 days. That proposed change would not reduce the risk of "bad behavior" to a degree that justifies the risk that the period does not reasonably accommodate the operational and technical complexity that complying with the requests will require.

For the above reasons, CalRecycle declines to adopt the specific revisions proposed in this comment.

Comment O-13-2

Section 18980.7.2. Review of Updated Independent Producer Plan

(e): The language states that “The Department shall approve the updated plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter.” This could be read to require the Department to approve a plan even if it lacks clarity, transparency, or enforceability, for instance. For example, the submitted Independent Producer Plan could allow problematic accounting methods for recycled content that would be deceptive to consumers and undermine consumer trust and therefore would violate one key intent of SB54: to increase actual recycling rates for packaging; it would also make enforcement of recycling targets much more difficult.

The Department should modify the language to address such scenarios and to assess consistency with the Act, the regulations, and the goals of both. To address this, we recommend the following edit:

(e): The language states that “The Department shall approve the updated plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter and is otherwise consistent with the Act and this chapter.”

Additions to previously submitted comments

We also stand by our previous comments (appended), including comments submitted in the NGO coalition letter sent by Californians Against Waste, of which NRDC was a signatory. In particular, we would like to draw your attention to previously made points related to “chemical recycling” technologies, recycled content accounting, and standards for reuse.

A. “Chemical recycling” technologies

In previous comments submitted by NRDC, we highlighted the following issues with the proposed regulations as they address “chemical recycling” technologies:

- Defining “significant amounts” of hazardous waste based on the concept of “risk” and “waste management” conflicts with the intent and statutory language of SB 54.
- The exemption for compliance with permits further exacerbates these conflicts with the law.
- Using the federal definition of hazardous waste rather than California definition does not comport with the law.
- The definition of recycling for technologies other than mechanical recycling relies inappropriately on ISO standard 59014:2024.
- Infrequent reporting of facility-level information could allow skirting of thresholds for “significant amounts of hazardous waste.”
- CalRecycle should include a definition of “Recycling” in the regulations that categorically excludes specified chemical recycling technologies and reflects SB 54 language and legislative history.

In addition to these points, we would like to underscore that fact that in 2024 the California Attorney’s General (AG) office filed a (still pending) lawsuit against ExxonMobil for “misleading environmental marketing” and specifically included detailed arguments about how “advanced recycling” (an industry term for the same set of technologies also referred to as “chemical recycling”) is highly problematic.2 The complaint titles one section “In a modern twist, ExxonMobil now deceptively promotes ‘advanced recycling’ as the solution to the plastic waste and pollution crisis.”3

The AG elaborates for more than 40 pages detailing misrepresentations around “chemical recycling,” including asserting that it is not “a viable, effective, efficient, or scalable method for reducing plastic waste and pollution.”4 For example, the complaint notes that claims about lower impacts for these technologies are “based on the inclusion of inflated and deceptive assumptions about end -of-life scenarios,” and that the "‘advanced recycling’ program is less like a recycling program, and more like a

waste disposal or destruction program akin to the incineration solutions advocated by ExxonMobil in the past."5

While it would be infeasible to cite all the relevant statements by the AG in this comment letter that raise serious questions about "chemical recycling" technologies, it is troubling that CalRecycle has since proposed SB54 regulations which open the door for chemical recycling technologies–particularly ones that generate significant amounts of hazardous waste–to count as recycling. This is especially the case given that statutory text and legislative history that make clear that the statute's definition of recycling excludes these "chemical recycling" technologies altogether and given that the law requires strong safeguards against technologies that generate significant hazardous waste.

B. Recycled content accounting

In previous comments submitted by NRDC, we highlighted how the SB54 regulations should include clearer descriptions and specifications of what constitutes accurate accounting of both recycled content and recycling rates in order to avoid deception of consumers. Certain forms of "mass balance" accounting create misleading and inaccurate accounting of recycled content that could result in low or no recycled content in a package even when significant recycled content *claims* are being made.

Under some particularly problematic accounting methods (called "free allocation" or "free attribution"), plastic can even be turned into fuel to generate "recycled" content credits which are then assigned to virgin plastic; that virgin plastic is then sold at a higher price point as "recycled" plastic. This kind of deceptive accounting would undermine efforts to get actual recycled plastic content into products . It would also obscure actual recycling rates given that the weight of the inputs determines how many "recycling credits" can be generated and assigned and may not be related to the actual amount of recycled polymer that is produced from the process.

The Attorney General's office wrote about these deceptive accounting methods as well. For example, in his detailed complaint, the California AG specifically cites the use and representations of "mass balance" accounting and/or "free allocation" as "untruthful, deceptive, and/or misleading."6 The complaint notes, that with "a maximum physical content of just 0.042 to 0.09 percent plastic waste, ExxonMobil's 'advanced recycling' effectively produces a product that is made almost entirely of virgin (new) plastic, but which it nonetheless markets as being a 'circular' plastic polymer…. 'certified circular polymers' effectively are virgin (new) plastics."7

This is not a hypothetical concern. The AG's complaint also explains how fruit cups marketed as containing "30%ISCC PLUS certified-circular content" have reached California consumers, despite the fact that these cups are made with effectively virgin plastic.8 CalRecycle should ensure that consistent and appropriate methodologies are used to calculate and market postconsumer recycled content and should not allow mass balance credit methods or other deceptive accounting and marketing methods such as "book and claim."9

C. Standards for reuse

NRDC would also like to reiterate a previously made point in our comments about how the lack of a standard floor for reusable and refillable products could make plastic pollution worse rather than better. CalRecycle's proposed regulations lack any quantifiable thresholds for measuring performance and defining "reusable and refillable," which means that producers could potentially just make their products out of thicker plastic, stamp the word "reusable" or "refillable" on them, and claim that they are reusable when few if any will actually be reused – rather than switch to more sustainable alternatives as is intended by SB54.

If the SB54 regulations permit minimal or nominal reuse claims–-without rigorous criteria for refill infrastructure, number-of-use thresholds, collection systems, and post-consumer accountability–they risk replicating this failure at scale across packaging types; adding to rather than reducing California's single-use disposable waste problems, which is opposite of the legislative intent.

For this reason, CalRecycle must: (1) adopt stricter, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity; (2) for consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status; (3) ensure that packaging cannot be considered reusable if it doesn't realistically get collected and reused, in which case it cannot be labelled as reusable; (4) CalRecycle should also establish a process for adopting third-party certification requirements when they become available.

Thank you for your consideration. Please feel free to contact us to discuss any of the issues we raise above.

Footnotes:

2 California Office of the Attorney General, "Attorney General Bonta Sues ExxonMobil for Deceiving the Public on Recyclability of Plastic Products," September 23, 2024. https://oag.ca.gov/news/pressreleases/

attorney-general-bonta-sues-exxonmobil-deceiving-public-recyclability -plastic

3 Ibid.

4 Ibid.

5 Ibid.

7 Ibid.

8 Ibid.

9 "Book and claim" is a credit trading method whereby companies can buy "recycled" content credits and attach them to their products but there is no traceability or physical connection between the claim and the material being certified. Such system is not only deceptive to consumers but is highly prone to abuse.

Response to O-13-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-14: Nixon Peabody LLP (Alison Torbitt)

Comment O-14-1

On behalf of multiple manufacturing clients operating across the industrial and business-to-business ("B2B") sectors that do business within California, we are providing comments on CalRecycle's proposed regulations to implement California's Plastic Pollution Prevention and Packaging Producer Responsibility Act ("SB 54") ("Proposed SB 54 Implementing Regulations" and "Proposed Regulations").

We appreciate and support the State's commitment to reducing plastic pollution and enhancing circularity, as well as share the goal of achieving responsible, long-term solutions for the management of packaging materials. We are, however, concerned that the Proposed Regulations introduce significant, novel, and unreasonable Extended Producer Responsibility ("EPR") compliance burdens, particularly for industrial and B2B manufacturers.

As discussed below, the Proposed Regulations do not adequately account for the complexity and diversity of manufacturing supply chains, logistics, and distribution activities, including return logistics, and closed-loop reuse systems common in B2B channels. They also establish entirely new compliance obligations that extend beyond both California's borders and the legislative, consumer-oriented, intent of SB 54. If adopted in their current form, these regulations impose disproportionate operational and financial burdens on affected businesses and delegate substantial regulatory authority and oversight to non-governmental entities, with limited mechanisms for accountability, fairness, or transparency.

I. SB 54 Targets Single-Use Packaging, Not B2B or Industrial Materials

SB 54 was enacted with the express purpose of addressing the environmental and public health impacts of certain types of packaging and food service ware, with a particular emphasis on postconsumer single-use plastic items.1 The Legislature deliberately focused on consumer-facing materials, as reflected in SB 54's plain language, defining "single-use packaging" and "plastic single-use food service ware" as materials that are routinely recycled, disposed of, or discarded *by the user or consumer* after contents have been used or unpackaged.2 The term "consumer" appears in SB 54 a total of 42 times,3 most often in the context of describing the impacts of single-use items encountered by consumers and underscoring the State's goal to reduce confusion and improve recycling outcomes for consumer-facing packaging. Notably, there is no explicit mention in SB 54 of any legislative intent to regulate materials that are not consumer-facing or are not single-use.

The term “covered material” is specifically defined in SB 54 to include “single-use packaging that is routinely recycled, disposed of, or discarded after use, and *is not* typically *refilled* or *reused* by the producer.” The definition was also carefully constructed to exclude certain types of packaging from its requirements, including:

- Packaging used for federally regulated products, such as medical products, devices, and prescription drugs, animal medicines and drugs, infant formula, medical food, fortified nutritional supplements, insecticides, rodenticides, fungicides, hazardous materials, hazardous or flammable products, and beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (“Bottle Bill”).
- Packaging for long-term protection or storage, and paint covered by the paint recovery program.
- Packaging materials that do not undergo separation from other materials at a commingled processing facility, are recycled at a responsible end market, and have demonstrated recycling rate.4

Therefore, a straightforward reading of SB 54 and its legislative history makes clear that the EPR obligations established by the law were intended to focus on single-use packaging and food service ware primarily encountered in the consumer context. Legislative analyses for SB 54 also repeatedly emphasize the issue of single-use consumer items.5 Consistent with this focus, SB 54 was not intended to regulate packaging that is designed for or primarily used in B2B, industrial, or manufacturing settings, especially where such packaging is not single-use or does not enter commingled consumer waste streams.

II. CalRecycle’s Proposed Regulatory Definitions Overstep SB 54 by Expanding EPR to B2B and Industrial Materials

The Proposed Regulations’ definitions of “producer,” “covered material,” and, most notably, “consumer,” significantly broaden SB 54’s scope beyond its intended focus on “single-use” items. For example, defining “consumer” as “the end user of an item, or the last person in the supply chain who acquires and uses an item”6 and clarifying that a “consumer” may include a retailer that uses a covered item in its business operations—regardless of whether the item is single-use, consumer-facing, or ultimately returned to a manufacturer or distributor for refilling or reuse.

This proposed definition diverges from the widely accepted understanding of “consumer” as being an individual who purchases goods for personal, household, or non-commercial use.7 CalRecycle’s approach also sharply contrasts with how the Legislature consistently referred to “consumers” in SB 54. This expanded definition of “consumer,” together with the proposed regulatory definitions for “producer” and the producer identification hierarchy, would extend EPR requirements to packaging materials that are not single-use and are used exclusively in business or industrial contexts. These types of materials simply were not the focus of SB 54 and should not be subject to EPR requirements.

Expanding these definitions to allow EPR obligations to attach to non-single-use and non-consumer-use materials would fundamentally alter the scope of the State's EPR program, imposing significant and unintended regulatory burdens on manufacturers that were never meant to be covered. This approach is also inconsistent with the legislative history of SB 54 and diverges from how other states have implemented similar EPR programs, resulting in regulatory inconsistency, increased administrative burden, and logistical challenges for manufacturers operating both within and outside California.8

CalRecycle should revise all relevant regulatory definitions in the Proposed Regulations to align with the intent of SB 54 and provide regulatory clarity. In particular, the definition of "consumer" should reflect its generally accepted meaning of —an individual who purchases goods for personal, household, or noncommercial use. This revision would appropriately refocus the scope of materials subject to EPR on single-use packaging and food service ware that are primarily encountered in the consumer context, consistent with the Legislature's original intent.

III. CalRecycle's Proposed Regulations Blur the Scope of EPR Requirements for Industrial and B2B Packaging Materials

The Proposed Regulations suggest packaging used exclusively in B2B transactions for shipping and logistics, such as shrink wrap, pallet wrap, protective foams, and corrugated materials, could fall within the definition of "covered material." These materials are specifically designed for the transport and protection of goods between manufacturers, distributors, and retailers; they are not generated or handled by individual consumers or households. Unlike consumer-facing packaging, B2B packaging serves a distinct purpose, follows a separate distribution pathway, and is managed through commercial end-of-life systems. These materials are also not intended for, nor typically encountered by individual consumers or households.

In other jurisdictions with EPR programs, such as Oregon, Colorado, Washington, and Minnesota,9 industrial and B2B packaging materials are explicitly excluded from EPR requirements due to their unique role in the supply chain and their typical reuse, on-site recycling, or management through established B2B channels. In contrast, CalRecycle's hierarchy for determining producer status and definitions in the Proposed Regulations suggest that industrial and B2B packaging, including materials that may be refillable or reusable, are subject to EPR requirements when classified as "secondary" or "tertiary" packaging.10

This result is further complicated by CalRecycle's producer identification framework, which introduces different producers for industrial and B2B packaging materials based on branding, contractual relationships (e.g., licensor vs. licensee), product use, occurrence of sale or distribution in California, the "consumer" definition, and when packaging is added to a product.11 CalRecycle's producer identification framework and approach result in a clear inference that commercial, non-single-use, and non-consumer packaging, which is used solely in manufacturing settings may have EPR requirements. Further, the materials may have different designated producers at various times, even

when these materials are circulated between business entities in a value chain as part of a circular system. This approach can create significant confusion over material management responsibilities and result in unintended consequences, including erosion of the current circular system, creating additional waste —particularly for secondary and tertiary packaging components that are not single-use. For example, by blurring the application of EPR requirements to industrial and B2B materials, CalRecycle risks unintentionally disincentivizing established circular programs and take-back initiatives that are already effective within the business sector. Imposing EPR fees on these materials could lead to duplicative material management costs and may prompt businesses to discontinue voluntary circular or take-back programs under the assumption that these materials are now the responsibility of the EPR system. This outcome would undermine existing,
efficient recycling and reuse systems, contrary to the broader goals of SB 54.

Including B2B packaging within California's EPR framework would not only depart from national and international norms but would also run counter to the legislative intent of SB 54, which was designed to address consumer-facing, single-use items entering municipal waste streams—not industrial transport packaging. Additionally, extending EPR obligations to these materials would exceed SB 54's intended scope and impose significant compliance costs and operational burdens on manufacturers, many of whom lack control over the materials' end-of-life. It also risks diverting resources away from SB 54's core goals of reducing plastic pollution, enhancing recyclability, and advancing a circular economy for single-use consumer items. Other EPR programs recognize the importance of keeping business materials such as shrink wrap, pallet wrap, protective foams, and corrugated materials outside the definition of "covered material" to continue incentivizing circularity and B2B take-back initiatives.12

For these reasons, we respectfully urge CalRecycle to revise the regulatory definitions to expressly exclude B2B and industrial packaging materials from the definition of "covered material," in alignment with the intent of SB 54 and consistent with established best practices in other EPR jurisdictions.13 In addition, we recommend that CalRecycle revise the proposed producer hierarchy and its overall approach to identifying "producers" and "covered materials" to promote regulatory clarity and ensure alignment with the statute's consumer-facing focus. In particular, the regulations should be simplified to allow manufacturers to readily determine their compliance obligations and to avoid unintended inclusion of materials already managed through effective, closed-loop commercial systems. This clarity is essential to preserve and support existing circular systems for B2B and industrial packaging, while maintaining SB 54's focus on reducing waste from single-use packaging and improving outcomes within the municipal waste stream.

IV. CalRecycle's Proposed Regulations Improperly Delegate Core Regulatory Functions to a Non-Governmental Entity

The Proposed Regulations grant significant authority to the State's approved Producer Responsibility Organization(s)("PROs") to administer key elements of the program,

including authority that in many respects amounts to regulatory oversight and decision-making.14 For example, under the Proposed Regulations, PROs are able to design all elements of the stewardship plan for EPR data collection, reporting, and fee assessments, as well as coordinate determinations of exempt materials and use of responsible end markets.15 While PROs are intended to serve as administrative entities supporting the State's implementation of SB 54, the Proposed Regulations risk shifting too much governmental and quasi-regulatory power to these private or non-governmental entities, without sufficient checks and balances or meaningful opportunities for producer input and review. Key concerns with the Proposed Regulations' approach include:

- PRO Obligations and Responsibilities Exceed Appropriate Delegation. Under CalRecycle's Proposed Regulations, the PRO is primarily responsible for reviewing producer compliance with EPR requirements, including the identification of material exemptions, evaluation of whether materials meet recyclability or compostability criteria, and approval of selected responsible end markets. This framework effectively positions the PRO to interpret and apply regulatory standards—functions that are fundamentally governmental in nature and more appropriately reserved for CalRecycle. Currently, there is no clearly defined process for producers to challenge or appeal a PRO's determination, nor is there an explicit role for CalRecycle to ensure that exemption evaluations are conducted fairly and consistently across all sectors.
- Restriction of Access to Exemption Processes for Independent Producers. The Proposed Regulations appear to allow only PROs, or, in limited cases, approved independent producers, to submit material exemption requests. This restriction effectively forces producers to rely on a PRO as the gatekeeper for regulatory relief, even where the PRO may have conflicting interests or where a minority of producers may have legitimate concerns not represented by the majority within the PRO. Such a system limits fair and equal access to administrative processes and introduces the risk that producer interests will be subordinated to internal PRO politics or majority rule.
- Lack of Accountability or Oversight Mechanisms for PROs. Perhaps most concerning, the Proposed Regulations do not establish meaningful accountability structures for PRO administration. Producers who are members of a PRO currently have no clearly defined process for raising grievances, challenging PRO decisions, or petitioning CalRecycle to intervene in cases of mismanagement, bias, or failure to meet statutory objectives. Nor is there a process by which minority producers—those whose voices may be marginalized within a PRO—can ensure their concerns are heard and addressed. Additionally, there is no clear regulatory pathway for the removal or replacement of a PRO that fails to meet its obligations or does not represent the interests of a sizable portion of its members. Given the scope of authority delegated to the PRO, this is a serious gap in governance and oversight that must be addressed.

To ensure alignment with the intent of SB 54 and uphold regulatory integrity, we respectfully urge CalRecycle to reconsider the extent of authority delegated to PROs. CalRecycle should retain final decision-making authority over all regulatory determinations, including exemption approvals and responsible end market designations. The regulations should be revised to allow all producers—regardless of PRO affiliation—to directly submit material exemption requests to CalRecycle.

Additionally, the PRO framework must include a clear and formal grievance and appeals process, enabling producers to challenge PRO decisions or raise concerns about PRO administration directly with CalRecycle. To promote effective, fair, and transparent administration, CalRecycle should establish robust accountability and transparency standards for PROs, including requirements for regular reporting, stakeholder engagement, and independent third-party audits.

Finally, CalRecycle's regulations should provide a mechanism for the agency to review and, if necessary, decertify or replace a PRO that fails to meet its obligations or does not fairly represent the interests of its members. By incorporating these accountability measures, CalRecycle can ensure that SB 54 is implemented in a manner that is fair, transparent, and consistent with the statute's objectives, without ceding undue regulatory authority to entities that lack direct public oversight.

V. Industrial Producers May Be Unprepared for Imminent Compliance Requirements

The Proposed Regulations impose highly accelerated compliance timelines for producer registration, reporting, and fee payments, some of which are triggered as soon as 30 days after the regulations take effect. While such urgency may be manageable for consumer-facing producers who clearly anticipated to fall within the scope of SB 54, applying these same timelines to industrial and B2B packaging—much of which is not single-use—would create substantial and unintended compliance burdens.

As noted in earlier comments, including materials such as industrial shrink wrap, pallet wrap, protective shipping foams, and similar transport packaging within the definition of "covered material" would effectively bring entire sectors of industrial and commercial manufacturers into the SB 54 framework. These producers, who have operated under the reasonable understanding that their materials fall outside the scope of a law focused on consumer-facing, single-use packaging, would suddenly be subject to complex new obligations.

Under the proposed timelines, these newly affected producers would be expected to:

- Determine whether their materials fall under the newly defined scope of "covered material";
- Trace packaging components across complex, global supply chains;
- Establish systems for data collection, reporting, and EPR fee payment, despite having had little or no prior engagement with the SB 54 regulatory development process.

This abrupt shift, coupled with aggressive deadlines, creates a significant risk of confusion, noncompliance, and disproportionate economic impacts, particularly on sectors that were not part of stakeholder consultations and were never intended to be the focus of SB 54.

If CalRecycle elects to retain the current definitions of "covered material," the producer hierarchy framework, and the associated processes for identifying regulated entities and packaging types, we strongly urge the Department to include a phased compliance schedule for non-single-use, industrial, and B2B packaging materials.

Such a phased approach would allow:

- Adequate time for affected producers to understand their obligations;
- The development of appropriate internal systems and supply chain coordination mechanisms;
- Better alignment with SB 54's original intent and the practical realities of managing industrial packaging flows.

Incorporating a phased timeline would help mitigate unintended regulatory burdens while preserving the integrity and enforceability of SB 54's core objectives.

VI. Conclusion and Recommendations

We appreciate CalRecycle's efforts to implement SB 54 and share the State's commitment to reducing plastic pollution and improving recycling systems. However, the Proposed Regulations, as currently drafted, significantly expand the scope of SB 54 beyond its intended focus on consumer-facing, single-use packaging, in contradiction to legislative intent and other states' EPR regulations. This overreach risks unintended compliance burdens on industrial and B2B manufacturers, disrupts existing circular systems, delegates excessive regulatory authority to PROs without adequate oversight or accountability, and invites potential litigation related to the dormant commerce clause and due process.

To ensure effective and equitable implementation, we respectfully urge CalRecycle to:
1. Revise definitions to clearly exclude industrial and B2B packaging from EPR requirements;
2. Align the definition of "consumer" with its plain meaning of an individual who purchases goods for personal, household, or non-commercial use;
3. Retain regulatory authority within CalRecycle, with direct access for all producers to request exemptions;
4. Establish transparent accountability mechanisms for PROs; and
5. Adopt a phased compliance schedule for newly affected materials.

We remain committed to supporting the successful implementation of SB 54 and believe these changes are necessary to preserve SB 54's integrity, prevent regulatory overreach, and support California's environmental goals without undermining responsible business operations. We welcome continued engagement on these matters

through Advisory Board meetings, this public commenting period, or further direct discussions with CalRecycle.

Footnotes:

1 See e.g., Senate Bill No. 54, Legislative Counsel's Digest (Jun. 30, 2022), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54.

2 See id. See also e.g., Assembly Committee on Natural Resources Hearing and Analysis on SB 54, (Jun. 26, 2022), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54# .

3 SB 54 also states "It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to rate payers, and increase system efficiency."

4 See Senate Bill No. 54; Cal. Pub. Resource Code § 42041(e). See also generally, Senate Bill No. 54 Bill Analysis, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB54 (with reports from the Assembly Appropriations, Assembly Floor Analysis, Senate Floor Analyses, Assembly Natural Resources, Senate Floor Analyses, and Senate Environmental Quality discussing the intent and purpose of SB 54).

5 See generally, Senate Bill No. 54 Bill Analysis, supra n. 2.

6 See Section 18980.2.1(a)(B)(Proposed).

7 The definition also departs from how California has defined "consumer" under other state laws. For example, under the California Consumer Privacy Act ("CCPA"), a consumer is defined as a natural person who is a California resident. This broad definition includes any individual who resides in the state for a non-temporary purpose or is a domiciliary of the state and temporarily away, but notably excludes legal entities like corporations, which do not have personal data privacy rights under the CCPA. The proposed definition here also conflicts with California's use of "consumer" in connection with regulated consumer products, which are generally considered to be a tangible item or product component produced or distributed for sale to a consumer for personal, family, or household use. See CA Health & Safety Code § 108042 (2024).

8 For example, Oregon, Colorado, Washington and Minnesota have expressly excluded certain B2B and industrial-use materials (e.g., pallets) in their EPR frameworks. See Oregon's Plastic Pollution and Recycling Modernization Act (SB-582B) (implementing regulations ORS 459A.863(6)(b)(D)-(E)); Colorado's Producer Responsibility Program for Statewide Recycling Act (HB 22-1355) (implementing regulations CO Rev Stat § 25-17-703(13)(b)(VI) (2024)); Washington's Recycling Reform Act (SB 5284, Rev. C. Wash. 70A.208); and Minnesota's Packaging Waste and Cost Reduction Act (Minn. Stat. § 115A.144 through 115A.1463).

9 For example, Oregon's EPR Program excludes packaging materials used in industrial settings and manufacturing through language in ORS 459A.863(6)(b)(D)-(E) stating a

“covered product” does not include “[r]igid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack or similar device,” and “[s]pecialty packaging items that are used exclusively in industrial or manufacturing processes.” Colorado’s EPR Program similarly excludes “[p]ackaging material used exclusively in industrial or manufacturing processes,” from its definition of “covered products” in CO Rev Stat § 25-17-703(13)(b)(VI) (2024). Washington’s EPR Program excludes packaging materials that are not sold or supplied “to the consumer for personal, noncommercial use,” and excludes “covered materials” that “a producer distributes to another producer; [that] are subsequently used to contain a product distributed to a commercial or business entity for the production of another product; and are not introduced to any person other than that commercial or business entity[.]” Rev. C. Wash. 70A.208.020 (25)(a) and 19(o), respectively. Similarly, Minnesota’s EPR Program includes an identical exclusion for “covered materials” that “a producer distributes to another producer; [that] are subsequently used to contain a product distributed to a commercial or business entity for the production of another product; and are not introduced to any person other than that commercial or business entity[.]” Minn. Stat. § 115A.1441, subd. 16(14).
10 “Secondary” and “tertiary” packaging are not, however, defined in the Proposed Regulations.
11 See Section 18980.1.1(Proposed).
12 See e.g., Oregon’s Plastic Pollution and Recycling Modernization Act (SB-582B), and corresponding implementing regulations ORS 459A.863(6)(b)(J) and ORS 459A.869(13), which allow for an exclusion and exemption of industrial and B2B materials that do not undergo separation at a commingled processing facility; and are further used or recycled responsibly.
13 See e.g., supra n. 8.
14 See Section 18980.6(Proposed).
15 See id.

Response to O-14-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-15: Rural County Representatives of California (John Kennedy)

Comment O-15-1

Dear Director Heller:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to provide comments on the proposed SB 54 regulation text.

RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties. RCRC represents all 19 California counties that qualify as "rural counties" under Public

Resources Code (PRC) Section 42649.8(h). RCRC was extensively engaged in the SB 54 development process and advocated for its passage.

RCRC appreciates the opportunity to provide comments on the proposed SB 54 regulation text. RCRC welcomes several changes included in the last few drafts of the regulation that are responsive to issues that we and other local agencies have raised. At the same time, we remain deeply concerned with other aspects of the proposal.

We and other stakeholders have consistently identified several revisions that are necessary to avoid unintended consequences and align the regulations with the text and spirit of SB 54. We regret that many of these critical issues remain unresolved. We fear that this failure will create implementation challenges and open the door for litigation that will further delay program initiation.

Restrictions on disposal of covered material preclude the use of compost for its intended purpose as compost.

RCRC remains concerned that the draft regulations preclude the use of compost for its intended purpose as a soil amendment.

As drafted, Proposed Section 18980.3.5(d) deems the land application of covered materials disposal. Section 18980.1(a)(5) defines "covered material" to include "materials that originated from covered material items." Compost is a recycled organic product produced from organic waste and compostable materials. The finished product is intended to be land applied to improve soil health, water retention, and carbon sequestration.

Since compost *originates from* compostable covered materials, it is still considered "covered material" under the proposed regulations. Logically, Section 18980.3.5(d) precludes finished compost from being applied to land, as that would constitute "disposal" of covered materials. California has spent a great deal of time and effort to promote and mandate the procurement of compost; however, we fear the regulations would undermine all those efforts by deeming land application of compost to constitute disposal. We strongly urge refinements to the text or Final Statement of Reasons to clarify that this section does not prohibit the land application of finished compost.

To address this issue, we suggest modifying Section 18980.3.5 as follows:
18980.3.5 ***(e) Nothing in this section shall preclude the land application of finished compost or the beneficial use of overs from compost operations consistent with existing law.***

Response to O-15-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-15-2

Broad categorical exclusions for food packaging undermine the program's intended goals, create free rider issues, and will confuse consumers

Proposed Section 18980.2(a)(2) creates a broad categorical exemption for covered materials that are used as packaging for a food or agricultural commodity if it is not possible to use other types of packaging that comply with both SB 54 and USDA or FDA rules, regulations, or guidelines related to microbial contamination, safety, or structural integrity of packaging.
We understand exemptions related to microbial contamination and food safety; however, allowing exemptions based on "structural integrity" will merely create an easy pathway for manufacturers to avoid having to participate in SB 54. It is unclear how this exemption will work for producers seeking an exemption when the packing is necessary for structural integrity. We fear that these provisions create loopholes for some of the nation's largest companies to seek exemptions for things like cardboard cereal and pasta boxes, readily recyclable plastic fruit and vegetable containers, and other goods. Such exemptions would cause widespread consumer confusion as to what should be recycled, leave local governments unreimbursed for the costs of managing materials consumers believe are "covered materials", and leave unexempt manufacturers to shoulder a higher proportion of program implementation (and mitigation fund) costs.

While amendments included in the new draft regulations address the disconnect between explanations in the ISOR and operation of the regulatory text, these broader concerns about producer manipulation, stakeholder confusion, and unreimbursed local expenses remain.

Response to O-15-2

Comment rejected. As explained in response to comments I-19-1 and I-59-2 (each submitted in response to the 45-Day Changes), section 18980.2(a)(2) has been extensively revised to address the commenter's concerns. In particular, section 18980.2(a)(2)(B) through (F) now sets forth an analytical framework for assessing whether alternative packaging is reasonably possible, establishes a procedure for CalRecycle to verify that notices contain the required content and do not omit known packaging that might serve as such an alternative, requires CalRecycle to update its publicly accessible database to ensure the public and stakeholders are on notice of packaging that is excluded or was previously excluded, and imposes restrictions to prevent repeated unmeritorious notices from affecting the compliance status of packaging. Regarding the local governments' "costs of managing materials consumers believe are 'covered materials,'" that concern is unjustified because consumer perception of packaging is not relevant to whether it is subject to the Act. Similarly, the objection concerning the proportion of costs to be covered by "unexempt manufacturers" is unjustified because the Act inherently acknowledges that certain packaging is not covered material and does not result in any entity being obligated as a producer.

Comment O-15-3

Regulations improperly restrict the scope of local costs eligible for reimbursement and create a reimbursable state mandate

While the proposed regulations attempt to provide clarity as to what types of local government and recycling service provider costs are reimbursable by the PRO, RCRC is concerned that it appears to improperly restrict the scope of local costs eligible for reimbursement beyond what is provided under SB 54. SB 54 is clear in that the Legislature intended to "ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing regulations."1 Furthermore, SB 54 intended for this new framework to "shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products."2

SB 54 is quite expansive in terms of the types of local costs that are reimbursable by the PRO or independent producer. RCRC objects to language in proposed Section 18980.8(g)(2) that limits the scope of "covered costs" by the PRO or independent producer. That section includes an exhaustive list of covered costs, so the PRO could decline to reimburse any costs that it argues are outside of the scope of those three categories, potentially including legitimate claims for educational expenses or covered material collection and recycling activities.

The effort to narrow the costs of reimbursable expenses to exclude costs that are of the same nature as those that would ordinarily exist fails to recognize that SB 54 itself removed local discretion and converted all those voluntary collection efforts into mandates.

A PRO or independent producer could try to avoid costs for collecting and getting covered materials to market simply because the local jurisdiction previously *voluntarily* collected those materials before SB 54 was signed into law. This ignores the fact that while a local agency previously had the ability to include or exclude any materials from its collection program, SB 54 removes any local discretion and *compels* the entity to include in its program all covered materials CalRecycle determines are recyclable or compostable. Any bale of covered materials collected under SB 54 is a ***NEW, required*** cost and is in furtherance of helping producers achieve SB 54's mandates, so any expenses incurred in collecting, processing, or transporting those materials are eligible for reimbursement under SB 54. Troublingly, this provision most disadvantages those communities that have gone above and beyond the AB 939 50% diversion mandate, thereby penalizing good actors.

A PRO or independent producer could reject claims to pay for local educational campaigns under the argument that educational campaigns would ordinarily exist anyway even in the absence of SB 54. Even if a local agency's educational materials are focused on SB 54 implementation, the PRO may be able to argue that the publication was similar in nature to others that had previously been published by the agency and so is no different in nature than ordinarily expected costs. This is clearly contrary to SB 54's intent that the PRO cover local implementation costs, including education.

Because of its narrow construction, the proposed regulations create a reimbursable state mandate because SB 54 and CalRecycle require local governments to provide a higher level of service, and the proposed regulations preclude recovery of those costs from the PRO and independent producers. To the extent that a PRO or independent producer rejects local reimbursement claims, it is reasonable to assume local governments will seek to recover those SB 54 implementation costs through the Commission on State Mandates, thereby significantly increasing state liabilities.

Dispute resolution process must be revised to protect local governments and preserve existing rights to pursue civil litigation

Local governments and ratepayers have long shouldered all the costs of managing and recycling waste, which is why SB 54's transformative approach is so appealing. Last year, RCRC and other stakeholders raised two important and interrelated questions – how will the reimbursement process work and how will disputes regarding reimbursement be resolved? Since that time, we and other stakeholders have engaged in informal discussions with the Circular Action Alliance about those topics. Those questions largely remain unanswered as the PRO works to figure out how to structure the program.

We recognize that CalRecycle has made many improvements to the dispute resolution framework, but important gaps remain that must be addressed. The proposed dispute resolution framework provides a pathway for the local jurisdiction or recycling service provider to request mediation, which would proceed to binding arbitration to resolve any remaining differences. Unfortunately, the regulation is silent on whether CalRecycle intends for this process to replace or supplement the parties' existing recourse to civil litigation. *At a minimum, CalRecycle must make clear in the regulations or Final Statement of Reasons that the dispute resolution process outlined in the regulations does not interfere with the parties' right to enforce through civil litigation the PRO's obligations to determine and pay costs incurred.*

Mediation and arbitration should not be the sole remedies available and must not infringe upon existing rights to civil litigation to enforce the PRO's obligation to determine and reimburse local jurisdictions and recycling service providers. Local jurisdictions and recycling service providers must retain the ability to resolve disputes with the PRO through civil litigation, including any disputes that may remain after mediation.

Additionally, RCRC strongly opposes any requirement for local jurisdictions to be compelled to use *binding* arbitration to resolve disputes with the PRO. While we believe mediation can be a useful dispute resolution tool, binding arbitration must not be compelled to resolve any remaining differences. ***Nor can binding arbitration be the only tool available if mediation fails.*** Arbitration is often criticized as being expensive, unwieldly, and prejudicial to less-resourced parties. Compelled arbitration is often exploited by large businesses to chill litigation from aggrieved parties who lack the resources or technical expertise to engage in that process. Simply speaking, the costs and complexity of binding arbitration will strongly disincentivize local jurisdictions and

recycling service providers from seeking to resolve legitimate disputes with the PRO. We are also deeply concerned that binding arbitration is not reviewable in civil courts, thereby reducing the likelihood that local jurisdictions will avail themselves of the dispute resolution process.

To ensure these rights are protected, we suggest the following changes to Section 18980.8(h):
18980.8(h)(4) ***The obligations of a PRO or independent producer to determine and pay the costs incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under Section 42051.1 are enforceable in a civil action between the affected entity and the PRO or independent producer. As an alternative to civil litigation, the dispute resolution*** ~~The~~ process must provide the option for the local jurisdiction or recycling service provider to require the dispute to be submitted to mediation and, if no agreement is reached through mediation, ***the matter may be submitted to*** binding arbitration...

(7) Nothing in this subdivision shall be construed to limit the ability of a local jurisdiction or recycling service provider to enforce the obligations of a PRO or independent producer under Section 42051.1 through a civil action in a court of competent jurisdiction, or to otherwise seek judicial review of any determination made by a PRO or independent producer, unless the local jurisdiction or recycling service provider has voluntarily elected to submit the dispute to binding arbitration.

Regulations impermissibly allow use of recycling technologies that produce a significant amount of hazardous waste
Despite clear statutory direction to the contrary, the regulations allow a PRO to use non-mechanical recycling technologies that produce significant amounts of hazardous waste. Public Resources Code Section 42041(aa)(5) requires CalRecycle to exclude plastic recycling technologies that produce significant amounts of hazardous waste. Surprisingly, Proposed Regulation Section 18980.4.1(d) seeks to allow recycling facilities to generate ANY amount of hazardous waste as long as it is handled and disposed of in compliance with an applicable permit. This clearly exceeds CalRecycle's regulatory authority and jeopardizes implementation of the law. SB 54 clearly prohibits the ***production*** of significant amounts of hazardous waste – it does not prohibit the ***unauthorized management of significant amounts of hazardous waste***, as outlined in the proposed regulations.

Simply stated, SB 54 is concerned with generation, not management or disposal, of hazardous waste. If the Legislature had wanted CalRecycle to ensure that hazardous waste was appropriately managed and disposed of, it could easily have done so. Instead, the Legislature focused restrictions on the ***production*** of hazardous waste.

The regulations also presuppose that materials will be managed domestically, where permits and laws regulate the management and disposal of hazardous waste. Foreign markets may not have hazardous waste disposal requirements commensurate with the

Resource Conservation and Recovery Act. In the absence of an equivalent regulatory environment, the regulations would allow foreign chemical recycling facilities to manage hazardous waste as ordinary trash.

To align the regulations with existing statutory law, CalRecycle must strike proposed Section 18980.4.1(d)(1)(B):
~~(B) The production and management of hazardous waste that is handled and disposed of in compliance with an applicable permit does not present a substantial risk of harm to public health or of contamination of the environment, for purposes of the Act and this chapter. Minor technical violations or minor deviations from permit conditions that do not result in, or are not reasonably likely to lead to, actual environmental harm or harm to public health shall not, by themselves, be considered noncompliance for purposes of this section.~~

Footnotes:
1 Public Resources Code Section 42040(b)(2)
2 Id.

Response to O-15-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-15-4

Regulations impermissibly restrict the definition of "hazardous waste"
Section 18980.4.1(d)(1) defines "hazardous waste" for purposes of SB 54 as hazardous waste defined under the federal Resource Conservation and Recovery Act (RCRA). This is a clear violation of existing law. Public Resources Code Section 40141 defines "hazardous waste" for purposes of Division 30 (Waste Management) of the Public Resources Code. That section defines "hazardous waste" to include, but does not limit the definition to, RCRA hazardous waste. It also cross-references Health and Safety Code 25117, which includes any wastes that meet criteria adopted by the Department of Toxic Substances Control (DTSC). As such, the Public Resources Code defines "hazardous waste" not as RCRA hazardous waste, but as a far broader class of hazardous wastes that are determined by DTSC.

SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, is contained in Chapter 3 of Part 3 of **Division 30** of the Public Resources Code. While SB 54 did not itself define "hazardous waste", it did not need to because Section 40141 already supplied that definition. As such, the ISOR's claim that "the Act does not define hazardous waste" ignores the very foundations of statutory interpretation and statutory law. The Legislature understood the Public Resources Code definition of "hazardous waste" when it crafted SB 54 to include the larger universe of California-designated hazardous waste, not just RCRA hazardous waste. While PRC 40100 allows the incorporation of alternate definitions if "the context otherwise requires", there is no clearly articulated context in SB 54 or the legislative record that would support the far narrower definition contained in the regulations. The ISOR's attempted justification for

using the federal RCRA definition to align California law with those of other states where recycling facilities may be located misses the mark – the Legislature already defined "hazardous waste" more broadly than the regulations and the statute is controlling.

To address this issue, CalRecycle must modify proposed Section 18980.4.1(d)(1) as follows:
(1) For purposes of paragraph 5 of subdivision (aa) of section 42041 of the Public Resources Code, "significant amounts of hazardous waste" means hazardous waste as defined in ***Public Resources Code Section 40141*** ~~Title 40 of the Code of Federal Regulations Section 261.3~~ that presents a substantial risk of harm to public health, or of contamination of the environment.

Response to O-15-4

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

Comment O-15-5

Local jurisdiction exemption pathway impermissibly imposes additional requirements beyond those included in the statute

Public Resources Code Section 42060.5(b) allows CalRecycle to grant an extension or exemption from requirements to include all covered materials in a jurisdiction's collection and recycling program if the jurisdiction shows that compliance is not practicable for that covered material because of specific local conditions, circumstances, or challenges. CalRecycle seeks to build upon this in proposed regulation Section 18980.11.1(c)(4) by also requiring the applicant to include documentation about the effects on the environment, environmental justice, worker health and safety, public health, and hazardous waste generation. As such, the regulations would allow CalRecycle to deny a requested exemption or extension unless it provides documentation of all of these impacts that are outside the scope of what the Legislature clearly contemplated in SB 54 – impracticability based on specific local conditions, circumstances, or challenges. If the Legislature intended to impose additional procedural hurdles or substantive criteria to qualify for an exemption or extension, it could have done so.

To address this issue, we suggest amending proposed Section 18980.11.1(c)(4) as follows:
(4) A description, with supporting documentation, of the specific local conditions, circumstances, and challenges that make it impracticable for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their collection and recycling programs. The description must demonstrate that the identified material cannot practicably be included in the collection and recycling programs. The description must also address, at a minimum, the necessity of the exemption with respect to the following considerations: program efficacy; technological or economic limitations; legal restrictions or requirements; ~~effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation;~~ and transportation safety.

Regulations should include an opportunity for stakeholders to provide feedback when a producer recommends changes to the covered material category list.
Proposed Section 18980.2.6 establishes a pathway through which a PRO, participant producer, or independent producer may recommend changes to the current Covered Material Category (CMC) list. As part of that process, the entity making the request must discuss financial implications and impact of the recommended changes on responsible end markets and intermediate supply chain entities. A PRO or independent producer may significantly underestimate the potential financial impacts of adding a new material to the CMC list so they can sell it in the state. Given the potentially significant impact that changes to the CMC list may have on the solid waste industry and local governments, it is imperative that those entities be given an opportunity to provide feedback on the change and be able to comment on the accuracy of the supporting information.

To address this concern, RCRC suggests adding a new subdivision (e) to proposed Section 18980.2.6 as follows:
18980.2.6 ***(e) The department shall provide an opportunity for public engagement and allow public comment and submission of relevant information and evidence, including, but not limited to, responding to the estimated financial implications and impacts of those changes on local jurisdictions and recycling service providers.***

Local government exemption process is unnecessarily lengthy and producer review should be compressed
RCRC remains concerned that the process outlined to review a local jurisdiction or recycling service provider exemption request is far too lengthy and will inhibit effective implementation of SB 54.

PRC 42065.5(b) allows local jurisdictions or recycling service providers to seek an exemption from the requirement to collect specific covered materials because local conditions, circumstances, or challenges make collection impracticable. As part of this process, the local jurisdiction or recycling service provider must notify the PRO and independent producers, who can object and arrange for alternative means for collection, processing, storage, and transportation of those covered materials.

The proposed regulations allow the PRO and independent producer 90 days to review an exemption application before a local jurisdiction or recycling service provider can submit it to CalRecycle for consideration. It should be noted that the PRO and Independent Producers are under no obligation to respond to an exemption request under PRC 42060.5. As such, the proposed regulation puts the applicant in purgatory for three full months while waiting to see if the PRO or independent producer even cares enough about the request to respond. This timeframe is unnecessarily lengthy and could easily be exploited by a PRO or independent producer to drag out the process. Rather than provide 90 days for the PRO or independent producer to review

an application, the regulations should reduce that period to 30 days. Similarly, the regulations should reduce the review period for renewal notices from 30 days to 14 days.

To address these concerns, RCRC suggests the following changes to Section 18980.11.1(d):
18980.11 (d) No exemption application or renewal request shall be submitted to the Department until after the local jurisdiction or recycling service provider has provided all PROs and Independent Producers the application or advance notice of the renewal request. All PROs and Independent Producers shall have ~~90~~ **30** days to review an application, and ~~30~~ **14** days to review a notice of a renewal request. During the review period

Enforcement scheme for local jurisdictions is unsupported by SB 54's statutory construction and can be better accomplished through other enforcement pathways

CalRecycle's proposed regulations impermissibly seek to impose SB 54's enforcement regime on local jurisdictions and recycling service providers. This approach is unsupported by SB 54's statutory construction and local compliance can be better accomplished through other existing enforcement pathways.

SB 54's enforcement authority is clearly limited to imposing penalties on producers and the PRO. CalRecycle's proposed regulations are predicated on the assumption that the term "any entity" in PRC 42081(a)(1) broadens the scope of its enforcement authority; however, that term should be defined in context of the other provisions included in Article 5 of SB 54. PRC 42081 seeks to interpret and implement PRC 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of PRC 42080.

PRC 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. PRC 42081 in turn:
• Sets the amount of penalties;
• Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;
• Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and,
• Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO, etc.

PRC 42083 and 42084 also allow CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Neither PRC 42080 nor PRC 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the proposed regulations inappropriately subject local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot avail themselves of a corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling AWAY from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under AB 939, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively. *At worst, penalties for local jurisdictions should be capped at the maximum $10,000/day AB 939 limit.*

Regulations do not actually require recycled covered materials to be used in new products

Proposed Section 18980.4 defines what constitutes the "end market" to which covered materials must be sent and recycled. The regulations define end markets as those that produce glass, metal, paper, or plastic feedstock that meets quality standards necessary to be used in lieu of virgin materials, including facilities that produce cullet (glass), ingots/sheets/coils (metal), pulp (paper), or pellets (plastic). While these are crucial steps in the recycling process, there is no guarantee that any of these materials produced at a "responsible end market" will ultimately be used by manufacturers to produce a new commodity. Instead, the regulations are indifferent as to whether the recycled feedstock is used, stockpiled, etc.

While Section 18980.3.5 prohibits "disposal" of "covered materials" (which includes products derived from covered materials), there is still no requirement that those materials be used for anything. This creates a significant risk that the regulations will merely result in the stockpiling of recycled feedstock that may or may not eventually be incorporated into new products depending on the cost of recycled vs. virgin feedstock. These concerns will be particularly acute if compostable plastics are ultimately considered "compostable" under the Act, as there are virtually no markets for the use of those products.

RCRC appreciates various changes made throughout the regulatory process in response to issues raised by local governments

We acknowledge and greatly appreciate many of the changes that CalRecycle has made throughout the regulatory process to address concerns raised by local governments and recycling service providers. Some of those changes include:

• Specifying that the date by which local jurisdictions and recycling service providers must collect and recycle covered materials aligns with CalRecycle's final approval of the PRO's stewardship plan.
• Providing local jurisdictions and recycling service providers one year to incorporate new covered materials into their collection and recycling programs.
• Establishing a presumption that covered materials are considered to be included in a jurisdiction's collection and recycling program if the provider collects the material and transfers it to a responsible end market or intermediate supply chain entity.
• Clarifying that local jurisdictions and recycling service providers are not required to establish the availability of a responsible end market that ultimately recycles the covered material.
• Deeming the absence of a responsible end market to be a local condition, circumstance, or challenge for which a local jurisdiction or recycling service provider can seek an exemption.
• Clarifying that the PRO's dispute resolution process must be made available if the PRO or independent producer unreasonably delays determinations of whether a particular cost is reimbursable.
• Modifying "chain of custody" requirements to greatly ease administration and reduce implementation costs by initiating tracking with the processing and subsequent transfer of covered materials rather than the point at which those materials are collected.
• Ensuring that a local jurisdiction has a choice to be reimbursed based upon its actual program implementation costs or through a "performance-based" funding model offered by the PRO.
• Providing an opportunity for local jurisdictions and recycling service providers to cure violations within 30 days of notice.
• Specifying that penalties shall not accrue against a jurisdiction or recycling service provider during the pendency of an exemption or extension request.
• Eliminating the ability for CalReycle to impose penalties on a local jurisdiction regardless of the reason for a violation.

While these changes are helpful, they do not address our underlying concerns that: 1) Local jurisdictions and recycling service providers will not be made whole for program implementation costs; 2) Jurisdictions will not have adequate or truly accessible pathways to effectively resolve reimbursement disputes with the PRO; 3) Categorical exclusions for food and agricultural commodity packaging will undermine the intent of the law and impose additional burdens on local jurisdictions, recycling service providers, and non-exempt manufacturers. *For these reasons, it is essential that CalRecycle carefully and scrupulously review and oversee development and implementation of the PRO plan and reimbursement process and ensure that categorical exclusions are only approved in circumstances where there is a clear and unavoidable conflict between SB 54 and federal law.*

Conclusion
RCRC appreciates your consideration of these comments. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Response to O-15-5

Except for the final two sentences of this comment, the comment does not concern any provisions of the proposed regulations that have been revised in the 15-Day Changes. Accordingly, no response is required except with respect to those final two sentences. In those two sentences, the commenter first notes, apparently in regard to section 18980.2(a)(2), that "[c]ategorical exclusions for food and agricultural commodity packaging will undermine the intent of the law and impose additional burdens on local jurisdictions, recycling service providers, and non-exempt manufacturers." The commenter does not explain how the revisions in the 15-Day Changes cause or exacerbate those alleged effects. Nor does the commenter explain how section 18980.2(a)(2) will "undermine" the Act or add to burdens on the entities mentioned (including "non-exempt manufacturers," the meaning of which CalRecycle cannot discern); the commenter only offers the conclusory allegation that it will do so. Accordingly, no response is required, but CalRecycle nonetheless rejects any general assertion that changes to section 18980.2(a)(2) will undermine the Act and impose additional burdens, for the reasons stated in responses to comments I-19-1, I-59-2, O-93-9, B-3-1, O-40-1, O-49-3, O-49-6, and B-56-2. In the final sentence of the comment, the commenter offers two identifiable recommendations. The first, urging CalRecycle to "carefully and scrupulously review and oversee development and implementation of the PRO plan and reimbursement process," does not concern section 18980.2(a)(2) or any other provision that has been revised in the 15-Day Changes. Even if the recommendation did relate to any portions of the regulations that have been revised, no response is necessary because the recommendation is not for the regulations to be changed, but rather for CalRecycle to execute them "carefully and scrupulously." Finally, the commenter urges that CalRecycle only approve "categorical exclusions . . . where there is a clear and unavoidable conflict between SB 54 and federal law." The commenter does not explain the basis for the implied assertion that the 15-Day Changes do not ensure such an outcome. No change is necessary to accommodate the commenter's concern because section 18980.2(a)(2) and (a)(2)(B) clearly require there to be an unavoidable conflict for the exclusion to apply.

O-16: Association of Home Appliance Manufacturers (Sriram Gopal)

Comment O-16-1

On behalf of the Association of Home Appliance Manufacturers (AHAM), I am writing to provide our comments to California’s Department of Resources Recycling and Recovery

(CalRecycle) regarding its latest proposed regulations under the Plastic Pollution Prevention and Packaging Producer Responsibility Act (hereinafter referred to as SB 54).

AHAM understands that CalRecycle is only interested in and required to consider comments relating to the changes made to the proposed regulations since its last comment period in 2025. AHAM filed comments concerning proposed SB 54 regulations in 2024 and 2025 and believes that CalRecycle has not adequately addressed several concerns raised in that correspondence. Therefore, we reiterate and incorporate those comments by reference here for the record.1

AHAM does have comments specific to the changes in proposed text but also wishes to use this opportunity to alert CalRecycle of future AHAM activities as well as serious concerns regarding the Circular Action Alliance (CAA), the Producer Responsibility Organization (PRO) that CalRecycle designated to operate its Extended Producer Responsibility (EPR) program, as well as the program's implementation.

I. CalRecycle's Delays In Publishing Final Regulations And A PRO Plan Creates Too Much Regulatory Uncertainty.

CalRecycle's delay in promulgating final regulations implementing SB 54, underscored by the recent withdrawal of the proposed regulations and addition of this 15-day comment period, is putting producers in an impossible position. The regulated community has repeatedly and consistently stated that the regulatory framework necessary for SB 54 compliance is incomplete and remains as such. Companies must make binding decisions for their operations, contractual relationships, and financial expenditures, but do not have clarity on the California EPR program's scope, key definitions, compliance obligations, or program operations.

Given this state of affairs, CalRecycle cannot expect producers to meet compliance deadlines established under SB 54. The EPR program is going to be highly impactful on producers operating in the California market and will be complex and difficult to implement efficiently. The rules governing compliance remain in flux, creating unacceptable levels of regulatory burden that undermines the program's credibility.

Even finalizing the implementing regulations in short order will not remove the uncertainty that producers are facing. The final PRO Plan is apparently expected in June, but this leaves insufficient time with the program's statutory January 2027 start date. Producers still do not have certainty about how the PRO will operate, the obligations it will impose, or the accompanying allocation of costs and responsibilities. If the current timeline continues, the PRO Plan will be subject to unacceptably compressed public review or final approval after the program start date. This implementation timeline will not lead to the results that CalRecycle seeks, as it will undoubtedly lead to confusion and disruptions. CalRecycle need only look to other states with similar programs, such as Colorado and Oregon, to understand that

developing a PRO Plan, incorporating public feedback, and finalizing the plan can take over two years.

The Circular Action Alliance must also be more responsive than it has been up to this point. AHAM and its members have reached out to CAA on a number of occasions and the response has been delayed, unhelpful, or nonexistent. One of CAA's chief functions is to guide and assist with producer compliance and one of CalRecycle's chief functions is to provide oversight over CAA. The lack of meaningful outreach or contact with CAA staff is proving to be problematic for program participants and it is not clear whether this is due to a staffing shortage or some other reason, but this does not bode well for and effective and efficient program.

CalRecycle needs to address these concerns, which are likely coming from numerous stakeholders, immediately and publicly. CalRecycle should also be aware that AHAM intends to raise these concerns through other appropriate channels in California's executive branch to demonstrate our level of concern and to facilitate and appropriate response.

II. AHAM Intends To File A Collective Exemption Request For Certain Materials.

CAA's shortcomings will have an impact in the near future. Section 18980.2.4 – Exemptions for Certain Covered Materials – is one of the sections that was modified in this latest draft. The section covers, at a very high level, the procedure behind seeking exemptions for packaging materials covered under the program. Pursuant to section 18980.2.4, parties seeking exemptions must first make such a request to the PRO and then the PRO will, in turn, file with CalRecycle. AHAM intends to seek a collective exemption on behalf of its members for the following materials: plastic film, plastic straps, tapes and adhesives, and expanded polystyrene.2 We expect that numerous other stakeholders will be filing similar requests, and it is not clear that CAA has the capacity to deal with the inundation that AHAM expects. Not only that, but at this point the procedures for filing such a request are not clear, nor is the mechanism by which the requests are made. If an online portal is not established, CAA staff will have the unenviable task of rifling through perhaps hundreds of e-mails and attachments instead of a more streamlined approach. Again, this does not bode well for an efficiently run operation.

This is but one example of why a final PRO Plan and underlying operating procedures are so important. At this point, it does not appear as though CAA and CalRecycle have sufficient infrastructure and staffing in place for the amount of work that lies ahead, and this is another issue that California must address immediately if it wants to implement a successful EPR program.

AHAM appreciates the opportunity to submit comments to CalRecycle regarding its SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations would be glad to discuss these matters in more detail should you request.

Footnotes:
1 See SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations (45-Day Comment Period) (dated Oct. 6, 2025) and SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations (15-Day Comment Period) (dated Nov. 4, 2024).
2 The comments filed in 2024 and 2025 provide some basic information on why this request is necessary, but AHAM will provide additional information as outlined in the proposed regulations for consideration.

Response to O-16-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-17: Flexible Packaging Association (Kyla Fisher)

Comment O-17-1

February 13, 2025

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations
California Department of Resources Recycling and Recovery (CalRecycle)
Regulations Unit
1001 I Street, MS-24B
Sacramento, California 95814
Submitted electronically via CalRecycle's Public Comment Portal

Re: SB 54 – Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations 15-Day Comment Period

Dear CalRecycle,

The Flexible Packaging Association (FPA) appreciates the opportunity to submit these comments to CalRecycle in response to the draft SB 54 – Plastic Pollution Prevention and Packaging Producer Responsibility regulations (the "regulations") published in the California Regulatory Notice Register on January 29, 2026. We offer the following comments to share our perspective on the practical considerations, implementation challenges, and opportunities presented by the proposed regulations.

FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. For fresh produce and meat in particular, flexible packaging is often the preferred format due to its lightweight yet highly protective properties. Flexible packaging is the fastest-growing and second largest segment of the

U.S. packaging industry, representing $51.5 billion in annual sales and approximately 98,000 workers in the U.S. Our industry has approximately 6,500 employees at flexible packaging manufacturing facilities in California, representing a total economic impact of more than $10 billion.

We appreciate that the revised regulations maintain a pathway for exemptions aligned with U.S. Department of Agriculture (USDA) and U.S. Food and Drug Administration (FDA) requirements. These federal standards have long served as the appropriate benchmark for determining whether food contact packaging is safe and legally compliant. Packaging intended for food contact is engineered first and foremost to prevent contamination and protect public health.

However, FPA is concerned that the Department's proposed process for determining whether no viable alternative exists to meet federal food safety standards may be overly restrictive and burdensome. Under the draft regulations, producers must not only demonstrate that no alternative exists to their specific packaging format, but also justify that each individual component and material cannot be substituted. This effectively requires testing and documentation across multiple hypothetical design concepts in addition to the actual packaging in use, significantly increasing compliance complexity and cost. Manufactures will be forced to divert resources from future innovation toward documentation of hypothetical alternatives.

Response to O-17-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same concerns as does this comment regarding restrictiveness and burdens. Regarding the assertion that section 18980.2(a)(2) will require "testing and documentation across multiple hypothetical design concepts in addition to the actual packaging in use," that concern is unjustified. In context with 18980.2(a)(2)(C), 18980.2(a)(2)(B) cannot reasonably be read to mean that every conceivable hypothetical design must be identified, much less documented and tested. Subparagraph (C) makes clear that CalRecycle cannot reject a notice based on merely hypothetical packaging. Rather, CalRecycle can deem a notice incomplete if it is aware of packaging that would avoid the conflict at issue but that the notice did not address. If the mere identification of such packaging were sufficient to render the exclusion unattainable, there would be no purpose of allowing, as subparagraph (C) does, resubmission of a notice showing that the identified packaging is not an alternative to the packaging to be excluded.

Comment O-17-2

We are also concerned about the timelines outlined in the draft regulations. Rapid review periods, and requirements for frequent reapplication, even in the absence of significant design changes, substantially increases assessment, reporting, and cost burdens. Packaging redesign—from initial concept through regulatory approvals and commercialization—can often take several years. The timelines currently proposed do

not allow sufficient time for responsible companies to safely test, validate, and deploy alternatives. We encourage the Department to extend the applicable timeframes and to adopt an approach that requires reapplication only when new material(s), component(s), or format(s) becomes widely available. As currently drafted, these requirements risk conflicting with Governor Newsom's direction to minimize unnecessary costs to small businesses and working families.

Response to O-17-2

Comment rejected. The commenter refers to "[r]apid review periods" and "requirements for frequent reapplication." CalRecycle cannot discern what the term "review periods" refers to, and section 18980.2(a)(2) does not include any requirement for "reapplication." To the extent this comment was intended to concern the application and renewal timelines applicable to exemptions elsewhere in the proposed regulations (e.g., exemptions described in section 18980.2.4), no response is necessary because those provisions have not been revised in the 15-Day Changes.

Comment O-17-3

While we recognize the benefits of electronically submitting and tracking exemption requests within a centralized public database, we have concerns regarding the confidentiality of proprietary information. Requiring public disclosure of materials and components that cannot be substituted could expose sensitive trade secrets related to product design and engineering, potentially enabling competitive reverse engineering. We recommend that the Department clarify how the use of a public database will comply with applicable federal protections, including but not limited to the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836, and the Freedom of Information Act (FOIA), Exemption 4.

To help mitigate confidentiality concerns, we recommend the Department consider allowing some "blanket" exemption requests from the PRO or manufacturers for packaging formats that may be used by multiple brands. This, instead of requiring multiple individual exemption requests for the exact same packaging application or format, would reduce the number of applications the Department would need to review, reducing costs on both the Department and those applying for exemptions and providing a certain level of competitive confidentiality. Alternatively, rather than publishing each exemption application, the Department could publish a list of packaging formats or materials they deem exempt. FPA maintains that Exemption 4 regarding the Freedom of Information Act (FIOA) provides the Department the necessary authority from sharing competitive design specifications publicly while still permitting material or component level disclosures.

Response to O-17-3

Comment rejected. To the extent the commenter intended to propose that notices submitted pursuant to section 18980.2(a)(2) be considered exempt from disclosure under the Public Records Act, CalRecycle rejects such proposal

because it would be illegal. All records submitted to CalRecycle are subject to mandatory disclosure under the Public Records Act unless a statutory exemption from such disclosure applies. As Public Resources Code section 42060(a)(2)(E) acknowledges, trade secrets are exempt from public disclosure, and section 18980.14 of the proposed regulations set forth detailed instructions for how those submitting information to CalRecycle can avail themselves of that exemption. Moreover, the public database described in section 18980.2(a)(2)(D) will not disclose the notices themselves. That provision only requires the database to identify the packaging, products associated with the packaging, the data the notice was deemed complete, and the status of any review of the notice. Regarding the Defend Trade Secrets Act and Freedom of Information Act, the commenter recommends that the regulations clarify how CalRecycle's database will "comply with applicable protections," but that law does not impose obligations on a state agency with respect to confidential information submitted to it. The commenter's assertion that FOIA "provides the Department with necessary authority" related to information submitted to it is incorrect; FOIA is a federal law that governs information obtained by the federal government, not by the state. Regarding the recommended allowance of "blanket" exemption requests, that solution would be inadequate because, without excluded packaging being described with specificity, neither CalRecycle nor interested members of the public would readily be able to discern whether a specific packaging item is deemed excluded. Regarding the suggestion that CalRecycle publish a "list of packaging formats or materials they deem exempt," the database itself, which will not include "each exemption application," will serve that purpose, effectively serving as a partial template for submissions. Moreover, no regulation is necessary for CalRecycle to publish demonstrative examples of such packaging to assist businesses seeking to understand what information will be considered sufficient, in effect enabling them to limit disclosure of confidential information to the greatest extent possible.

Comment O-17-4

Finally, we note that balancing consumer health and safety with environmental objectives necessarily involves tradeoffs. In addition to protecting public health, fresh food packaging plays a critical role in preventing food waste, reducing greenhouse gas emissions, and ensuring the delivery of safe, highquality products to Californians. Packaging is essential to maintaining product integrity throughout harvesting, cooling, transportation, and retail handling. Packaging changes that satisfy food safety requirements but fail to deliver necessary functionality may inadvertently increase contamination risks, shorten shelf life, raise food waste levels, and increase overall emissions. An approach that prioritizes recyclability without accounting for full life-cycle environmental performance risks undermining California’s broader climate and sustainability goals. Replacing lightweight flexible packaging deigned for longer product shelf-life with heavier alternatives may inadvertently increase transportation and food waste related greenhouse gas (GHG) emissions in California, outcomes that run counter to the core intent of SB 54.

Thank you for the opportunity to comment on the draft regulations implementing SB 54: Plastic Pollution Prevention and Packaging Producer Responsibility Act. We appreciate your consideration of our recommendations and would welcome the opportunity to provide additional information or engage further. Please do not hesitate to contact me at (602) 540-7544 or kfisher@flexpack.org.

Response to O-17-4

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections this comment raises. To the extent this comment raises issues not addressed in that response, no further response is necessary because none of those issues are relevant to whether there is a conflict with federal requirements. Rather, the comment is directed at "[p]ackaging changes that satisfy food safety requirements" but face other challenges and risks. For such packaging, there is no direct conflict with federal laws, and accommodating challenges and risks not arising out of such a conflict is the purpose of the exemptions provided in section 18980.2.4. To the extent this comment may be construed to allege that section 18980.2.4 should be revised to account for concerns created or exacerbated by the changes in section 18980.2(a)(2), CalRecycle rejects that suggestion for the reasons provided in response to comments B-3-1, B-50-1, and O-33-6.

O-18: CALPIRG Education Fund & Environment California Research and Policy Center (Fiona Hines)

Comment O-18-1

Re: Request to improve regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)

Dear Director Heller,

CALPIRG and Environment California were both proud to support the passage of the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) to address our growing plastic pollution crisis. We understood then that if well-implemented, SB 54 could reduce plastic pollution and litter; protect public health, wildlife, and the environment; improve reuse and recycling; and lower costs for all Californians.

We appreciate CalRecycle's tightening of the language around categorical exclusions in the most recent update to the proposed regulations, but we remain concerned that it is weaker than the existing exemption process outlined in the law. We recommend that CalRecycle rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations, and eliminate categorical exclusions.

Additionally, we remain concerned that the proposed regulations still weaken protections against "chemical"–sometimes called "advanced"– recycling technologies. Chemical recycling technologies are expensive, inefficient, and hazardous to human and environmental health. Plastics-to-fuel plants using pyrolysis or gasification do not turn plastic into new plastic, do not reduce demand for virgin plastics, and produce fossil fuels that are then burned, contributing to air pollution and global warming. Even technologies that could, in theory, convert plastic waste to new plastics pose major threats to our environment and health.

The language of SB 54 and the initial regulations were clear that technologies are prohibited if they create more hazardous waste than mechanical recycling. Unfortunately, the latest regulations still make this prohibition vague and moot with a permit. This is not how we protect our communities from harmful technologies.

Without remedying action, these critical protections that were passed into law –which thousands of Californians support– are badly undermined

Californian consumers want better alternatives to wasteful packaging and single-use plastic products. We've had thousands of conversations with Californians at their doors, at community events, and on campuses - what we've heard loud and clear is that Californians want solutions to waste. They understand that their own decisions to be "responsible" consumers are not sufficient to solve the problem at hand, and they want government and industry to take responsibility for the systemic changes needed to make less wasteful, less polluting packaging the norm, not the exception. Ensuring SB 54 is enforced with strong regulations is the best program we have for achieving this transition quickly.

CalRecycle should rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations, and eliminate categorical exclusions, and strengthen the regulations so that only real recycling technologies are allowed in our state, not chemical recycling.

Failing to make these changes threatens to leave consumers and ratepayers on the hook to pay for mounting levels of plastic waste and risks undermining the key intent of this law: to greatly reduce the amount of plastic we are producing and discarding into our environment, and to protect our communities from the environmental and health impacts of plastic production and disposal.

We urge CalRecycle to heed our suggestions and strengthen the regulations so that California can truly be a leader in protecting our communities and our environment from toxic pollutants and waste.

Sincerely,

Fiona Hines
Legislative Advocate
California Public Interest Research Group Education Fund
(CALPIRG Education Fund)

Laura Deehan
State Director
Environment California Research and Policy Center

1David Allen, “The Fraud of Advanced Recycling,” Center for Climate Integrity, May 2025.

Response to O-18-1

Comment rejected. Regarding the request for the regulations to rely on section 18980.2.4 in lieu of the exclusion provided in section 18980.2(a)(2), CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. Those reasons apply equally to this comment, which does not describe the basis for the request with respect to any of the revisions in the 15-Day Changes. Regarding the other objections and recommendations in the comment, no response is necessary because they do not concern any revisions in the 15-Day Changes.

O-19: Household & Commercial Products Association (Molly Blessing)

Comment O-19-1

Please find attached comments from the Household & Commercial Products Association on the changes to the proposed regulations. Thank you for the opportunity to submit comments. Please feel free to reach out with any questions.

Response to O-19-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-19-2

February 13, 2026
Zoe Heller
Executive Director
California Department of Resources Recycling and Recovery
P.O. Box 4025

Sacramento, CA 95812-4025

Subject: HCPA Comments on SB 54 Plastic Pollution Prevention and Packaging ProducerResponsibility Act Revised Regulations – 15-Day Comment Period

The Household & Commercial Products Association (HCPA)1 appreciates the opportunity to provide input on the implementation of California Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act of 2022, 2 and draft revised regulations. We thank the California Department of Resources Recycling and Recovery (CalRecycle) for being so thoughtful in collecting stakeholder input on multiple revisions and look forward to continuing to work with the Department on the successful implementation of SB 54.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into California or otherwise have a presence in the state and are committed to ensuring that Californians have access to high-quality products with reduced environmental impacts.

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellant, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle aerosols.

Input on Updated Revised Regulations

HCPA recognizes that CalRecycle intends to limit consideration of comments to those that pertain to the newly revised regulatory language that CalRecycle made available as part of this 15-day public comment period. As such, HCPA will not reiterate prior comments from our association that address the regulatory language made available for public comment in fall 2025. However, HCPA would like to take this opportunity to emphasize the challenges that the additional regulatory delay and uncertainty about

exclusions has created both for producers seeking to comply and for the Producer Responsibility Organization (PRO) that is preparing for implementation.

Program scope – what is covered, exempt, and excluded – is crucial to clarify as far in advance as possible for the success of any EPR program. The multiple delays in finalizing regulations, leading to an expected date of adoption well past the January 1, 2025 statutory deadline for CalRecycle *while statutory deadline remain unchanged*, have left producers uncertain of what they need to report and what packaging designs they should change even as we are now less than one year from implementation. This not only incentivizes free ridership and inaccurate reporting and fee payments, but – most importantly – makes it effectively certain that producers will not be able to meet SB 54's ambitious source reduction and recycling targets.

HCPA is concerned about a lack of clarity for de minimis exclusions. The regulations provide a clear review timeline for food/agricultural product exclusions. A similar mandatory timeline for de minimis determinations would bring much needed predictability to another statutory exclusion that is equally critical to program's success. This is important for categories such as aerosol products, many of which are subject to stringent federal safety and pressurerequirements. Ambiguity around de minimis exclusions creates the same chilling effect on design innovation that the food and agricultural sector has highlighted.

As written in section 18980.2.2(b), it seems that CalRecycle must review and approve de minimis applications from the PRO before de minimis determinations go into effect, but there is no timeline by which CalRecycle must do so. The result in practice appears to have been that none of the de minimis applications submitted by the PRO have been reviewed and CalRecycle has not committed to making a decision on any of these applications, even as producer reporting deadlines are fast-approaching. There is no transparency as to CalRecycle's timeline for reviewor any concerns that CalRecycle may have about the applications that could guide producers on what to expect.

<u>The statute clearly envisions that some types of packaging components can and should be considered de minimis and thus exempted from the law's definition of packaging</u>.3 The confusion created by CalRecycle's lack of action on de minimis applications has led to significant uncertainty about both what funds will be available to the PRO as the PRO prepares implementation budgets and what design changes producers should make that would be meaningful for source reduction. If CalRecycle issues a determination that certain components are de minimis a year or two in the future, the PRO could be in the position of having to issue refunds/credits to numerous producers that substantively lower the PRO's operating funds for that year, though the cost of the program remains the same. Further, with regard to source reduction efforts, in the absence of clear direction the lowest-risk company action is often no change, <u>directly undermining SB 54's source reduction goals and the very circular economy progress HCPA members are actively pursuing.</u>

Consumer and worker-facing industries such as household and commercial products facesignificant challenges with adopting and scaling new, circular, solutions. Producers experience high pressure from business and retail customers to keep costs low, discouraging packaging change. Regulatory shifts that require reduced, compliant, and future-proof packaging can drive real change, but only if the regulatory advantage of moving to a novel material or technology is clear. Additionally, scaling these innovations requires not only packaging advances but also investments in production infrastructure, strategic supply chain partnerships, and creative repurposing of existing facilities. It is already effectively certain that the first set of source reduction targets will not be met due to an approximately 1.5 year delay in adopting regulations, coupled with an unchanged statutory deadline for producers. Now, the later targets are at high risk as the additional delay of any review and approval of de minimis applications has left producers with little clarity on how to prepare for compliance.

To align with the underlying statute and limit financial and source reduction uncertainty, HCPA strongly encourages CalRecycle to **swiftly** review and process de minimis and other exclusion applications once the regulations are finalized. HCPA additionally recommends thatCalRecycle introduce and adhere to a mandatory response timeline for de minimis exclusions, in alignment with the timeline for response to other Department-reviewed exclusions, to support process transparency.

Conclusion

HCPA thanks CalRecycle for the opportunity to provide additional input on CalRecycle's revised regulations for implementation of SB 54. We appreciate the care that CalRecycle is taking to solicit stakeholder input on developing rulemaking concepts. HCPA looks forward to continuing to engage with CalRecycle to support the success of SB 54 implementation. We invite any questions about this submission and look forward to CalRecycle's response.

Sincerely,
Molly R. Blessing
Vice President, Sustainability & Product Stewardship

1The HCPA is the premier trade association representing companies that manufacture and sell $227 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ over 300,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.
2https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54
3California P.R.C. 42041(s)(4)(A)

Response to O-19-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

O-20: Ventura County Agricultural Association (Robert P. Roy)

Comment O-20-1

Re: Comments on SB 54 Final Draft Regulations - 15-Day Comment Period
To CalRecycle:

For over 50 years, the Ventura County Agricultural Association has represented the interests of over 150+ major growers, shippers, packers and processors of fresh agricultural products. We are submitting comments on the Jan. 29, 2026, final draft "SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act" regulation on behalf of those members located in the counties of Ventura and Santa Barbara, in California.

The revised language in Section 18980.2 (Categorically Excluded Materials) is deeply concerning. The addition of the word "mandatory" and the narrow definition of what is "reasonably possible" effectively eliminates the categorical exclusion pathway for fresh produce packaging.

Federal food safety packaging statutes, regulations and FDA guidance represent the current, widely accepted compliance pathway for the fresh produce industry. Packaging decisions are driven by food safety requirements, including FSMA and FDA food-contact standards, which are designed to prevent contamination and protect public health. These federal requirements have long served as the appropriate benchmark for determining whether packaging is safe and legally compliant.

In addition to food safety, fresh produce packaging serves many other critical functions for fresh produce, including optimizing the supply chain to prevent food waste and greenhouse gas emissions, and ensuring the delivery of quality fruits and vegetables to Californians. Packaging is necessary to maintain the integrity throughout harvesting, cooling, transportation and retail handling. Fresh produce packaging is highly technical and carefully engineered to:
- Protect fragile produce from physical damage during transit and handling
- Optimize transportation efficiency which reduces energy demands or the supply chain
- Maintain airflow, moisture control and structural stability
- Preserve shelf life and product quality

Fresh produce packaging is also designed to keep produce alive longer by managing respiration and moisture. These functions:
- Reduce spoilage and contamination across the supply chain
- Reduce food waste, which directly reduces greenhouse gas emissions associated with wasted food production, transportation and disposal

Packaging changes that conflict with established federal food safety guidance or compromise package integrity or shelf life will increase food waste and associated GHG emissions, undermining California's environmental and climate objectives.

As drafted, the regulation requires producers to prove that:
• No alternative packaging complies with FSMA, FDA food-contact requirements and California law. The fresh produce industry is constantly evaluating alternatives to further enhance food quality and safety. Most alternatives do not provide the same functionality as the industry gold standard, leading to increased risk of food waste, contamination, and costs to consumers.
• Conflicts cannot be resolved through liners, coatings or closures. Removing access to tools that can support the transition to alternatives packaging will stifle advancements and packaging technology advancements.
• A full package redesign would still fail food safety or legal requirements. Food safety is a critical priority for the fresh produce industry.

This standard is unworkable and does not reflect real-world food safety, operational and supply-chain constraints. In many cases, alternative materials either do not exist or would increase contamination 1isk, compromise package integrity, shorten shelf life or increase food waste.Without a viable categorical exclusion, SB 54 would impose:

• Unrealistic recycling and recyclability mandates
• Permanent caps on single-use plastic packaging with no accommodation for business growth
• Significant EPR fees and exposure to civil penalties of up to $50,000 per day, per SKU

Our Association respectfully urges CalRecycle to revise the final regulation to restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

Thank you for considering these comments.

Respectfully,
President Robert P. Roy
President and General Counsel

Response to O-20-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which is substantively the same as this comment.

O-21: American Forest & Paper Association (Shoshana Micon)

Comment O-21-1

RE: Comments related to SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period

On behalf of the American Forest & Paper Association (AF&PA), thank you for the opportunity to provide feedback concerning the proposed SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations.

AF&PA serves to advance public policies that foster economic growth, job creation and global competitiveness for a vital sector that makes the essential paper and packaging products Americans use every day. The U.S. forest products industry employs more than 925,000 people, largely in rural America, and is among the top 10 manufacturing sector employers in 44 states. Our industry accounts for approximately 4.7% of the total U.S. manufacturing GDP, manufacturing more than $435 billion in products annually. AF&PA member companies are committed to making sustainable products for a sustainable future through the industry's decades-long initiative — *Better Practices, Better Planet 2030.* In California, the industry employs more than 55,000 individuals in nearly 385 facilities, contributes $477 million in state and local taxes, and manufactures more than $23.6 billion in products.

Paper Recycling Works

Paper recycling is essential to our industry's efforts to achieve important sustainability goals and build a more circular value chain. Paper is one of the most widely recycled materials in America, turning used paper into new, essential products Americans rely on. In fact, more than 2/3 of all paper recycled in the U.S. is turned into new products at mills nationwide. In 2024, we recycled around 46 million tons, translating to an overall paper recycling rate of 60%-64%.

Paper recycling is also vital to our national supply chain. AF&PA members own and operate more than 100 materials recovery facilities across the country. About 80% of U.S. paper mills use some recycled paper to make new, sustainable products. Our industry is scaling up the use of recycled paper. U.S. mills used 1.29 million more tons of recycled paper to make new products in 2024 – that's 32.7 million tons compared to 31.3 million tons in 2023.

Our industry has prioritized recycling for over 30 years, and we are committed to continued progress. AF&PA members are not just participants in the recycling system, we are helping build and improve it through voluntary industry investments that use more recycled paper, create jobs, and innovate in our U.S. manufacturing processes. During 2019-2025, our industry invested in projects at paper mills that will use over 4.5 million additional tons of recycled paper. Companies built new mills, upgraded old ones, and modernized equipment.

We are concerned that the changes to the regulation do not introduce substantive enough modifications to alleviate the unnecessary cost burden for producers or consumers, or adequately address our industry's concerns. Issues such as the *de minimis* exemptions and producer definition must be addressed or there is a risk of systematic program failure. Please find below our feedback regarding the latest changes made to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations.

Proposed Changes
Categorically Excluded Materials
While intended to add rigor and a framework to prevent broad exclusions across product categories, the proposed changes to Section 18980.2 risk an unintentional ban of highly recyclable fiber-based products. For example, molded fiber is a highly recyclable and widely used product for shoes, electronics, eggs, fruit, vegetable, and other retail and food service ware packaging. Hypothetically, if molded fiber were banned for sale in CA, the requirement to "demonstrate that it is not reasonably possible to use any alternative packaging or packaging components that would avoid the conflict" in 18980.2(B) would encourage the use of more plastic packaging.

More clarity is needed for when this exemption begins for producers. It is unclear if this exemption begins upon program implementation or after the January 1, 2032 mandate for covered material offered for sale, distributed, or imported in or into the state be recyclable or compostable, and to ensure that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates.

Past Comments

Definitions
Plastic
The proposed definition of plastic will create unintended consequences when coupled with the commodity bale specifications for paper-based packaging and food service ware and the practical realities of how materials are aggregated, sorted, processed, and remanufactured. In statute, the definition of plastics "means a synthetic or semisynthetic material ... that can be shaped into various rigid and flexible forms." This language should exclude materials that lack independent structural integrity and cannot exist as plastic components without being bonded to a fiber substrate. This includes coatings, inks, and adhesives.

The current definition is overly burdensome and will require manufacturers to meticulously track, document, and calculate the trace amounts of plastic coating, adhesive, or ink that comprises a paper-based package or food service ware, likely down to the thousandth of an ounce level. Additionally, this information may compromise proprietary formulations. Examples 6 and 7 from the Source Reduction Guidance published by CalRecycle this summer highlight the unreasonable burden currently in place. We recommend that CalRecycle grant an explicit *de minimis* exclusion for the trace use of these non-fiber elements.

Food Service Ware
AF&PA supports the Foodservice Packaging Institute's (FPI) comments on the definition of food service ware. The term should be defined as "plastic food service ware" rather than the broader term "food service ware" to ensure consistent interpretation and reduce confusion. The food service ware item should also not be referred to as a

"good." This creates ambiguity and inconsistency between sections A and B of the definition.

Producer
We support the clarification in the producer definition that "empty packaging materials not yet used by a good are not 'single use packaging' or otherwise 'covered material' under the Act." Similar to the exclusions in Oregon (ORS 459A.863(6)(b)(D) and (E)), we encourage CalRecycle to explicitly exclude unconverted paperboard rolls, other immediate substrates (e.g., corrugated sheets), and ancillary shipping materials (e.g., cores, roll wrap, pallets).

Reusable and Refillable
AF&PA agrees with FPI that the definition of "reusable" in Section 102(33)(b)(i) should be updated to reflect the ability of the packaging to be refilled for the same or similar general purpose. However, both definitions still lack criteria for comparing relative environmental performance of "reusable" and "refillable" materials against single-use recyclable materials. This will create an unfair competitive environment that could result in unintended outcomes, including regrettable substitutions for single-use recyclable materials with a superior overall sustainability profile than "reusable" or "refillable" options. Regulations should strive to avoid overtly picking winners and losers among materials.

Covered Material
The current definition of Covered Material references "substances." The term "substance" is not defined within the draft regulations, and the lack of a clear definition for this term creates significant confusion, especially when applied to end-of-life management. For greater clarity and regulatory certainty, the regulation should either formally define "substance" as it pertains to end-of-life scenarios or, alternatively, replace the term with language that clearly specifies the intended scope—such as "material," or "component."

Producer Identification
More clarity is needed in the updated Producer Identification section 18980.1.1 (c) on the definition of a manufacturer. The manufacturing of paper relies on complex, cross-border, circular supply chains. Mills create the base pulp and paper for many different products and then that material goes on to one or several converting facilities to become the end packaging product. To comply with reporting of supply data, it is imperative that our members understand to whom in the supply chain "manufacturers" refers. We are concerned that in 18980.1.1(c)(1) "The person who manufactured the goods is the producer, provided that the person is in the state and either owns the designated brand or trademark or is licensed to manufacture the goods" will lead to producer obligation lying with the mills.

As highlighted by FPI, there is significant inconsistency between the producer identification framework for packaging and food service ware. As currently written, the producer identification process for food service ware shifts the designation of producer

to the manufacturer of the packaging, rather than to the brand owner associated with the food service ware. This inconsistency will cause confusion and complications for producer reporting and does not align with the legislative intent of SB 54. For both definitions, more clarity is needed on how to appropriately identify the brand owner.

Exclusion of Reusable and Refillable Packaging and Food Service Ware

Section 18980.2.1(a) states that packaging and food service ware that meet the requirements to be deemed "reusable" or "refillable" are not covered material under the Act. The goal of this program is to reduce landfilled materials and otherwise manage the end of life of products. Reusable packaging and food service ware will reach an end of life whether through deterioration, obsolescence, safety, rebranding, or other reasons. Balance is needed to ensure that reuse and refill systems are implemented where they will be successful and have the most impact.

Wooden pallets meet all of the requirements in Section 18980.2.1. We encourage CalRecycle and Circular Action Alliance to explicitly state that wooden pallets are reusable, and therefore, exempt from the requirements of SB 54.

De Minimis

Section 18980.2.2 (b) currently lacks the clarity our industry needs to understand how this addresses the minimal use of adhesives and coatings on packaging and food service ware that is primarily composed of recyclable paper materials. We urge the department to continue to refine this language, provide additional explanation to the *de minimis* use of adhesives and coatings, and reflect that clarity within the definition of plastics.

We appreciate the ability of the PRO to request that the Department deem certain components to be of *de minimis* weight or volume. However, it is important that this determination does not lie with the PRO alone as the arbiter. The *de minimis* use of adhesives and coatings should be determined in the regulation. More clarity is required in Section 18980.2.2 (b) (4) on how a notice of violation could lead to a component or groups of components to be determined as *de minimis.*

Industry wide exemptions should be allowed for *de minimis* materials. Each company having to prove they qualify adds significant costs and is overly burdensome. If a packaging type receives a *de minimis* exemption, it should no longer be classified as plastic. Furthermore, we suggest that where there are industry standards, the *de minimis* threshold should align with that standard.

Exemptions for Specific Materials with Demonstrated Recycling Rates

We have concerns that the current application process laid out in Section 18980.2.3 and 2.4 lacks the flexibility needed to address industry-wide exemption requests. For example, if an exemption is sought for the adhesive lining in cardboard boxes, the process as currently outlined could be read to require each individual company to submit separate applications, resulting in unnecessary duplication of effort and administrative burden. To prevent these inefficiencies and support a more effective

implementation of the program, industry associations or the PRO should be able to submit a single exemption application on behalf of all impacted producers for a given material. The ability to make collective exemption requests based on material category should be clarified as permissible under the regulations. The current approach in the regulations makes the exemption process so burdensome as to devalue the exemptions, which is contrary to the legislative intent. The exemptions were a critical piece of the final legislation.

The criteria to qualify for an exemption in Section 18980.2.3(a)(3)(B) that "after being collected, none of the items are commingled with unsorted material collected by curbside programs" is unnecessary. Clean sorted material would not be combined with unsorted material during curbside collection. We suggest that these regulations instead use the statutory language from SB 54 that states that "the covered material does not undergo separation from other materials at a commingled recycling processing facility."

Covered Material Category List Updates

The CMC list should be updated more frequently than annually if new data is gathered that would change the recyclable or compostable status of a CMC. We agree with Tetrapak's recommended language for Section 18980.2.5(b):

18980.2.5(b) For purposes of subdivision (a), updates are necessary if new information or changed circumstances renders the list out of date, incomplete, or otherwise inaccurate with respect to how it relates to waste generation and the handling and end-of-life management of covered material. At a minimum, the Department shall update the list twice annually if new information and changed circumstances support changing the recyclable or compostable status of a CMC.

Covered Material Category List Recommendations

Packaging manufacturers and trade associations should be allowed to make recommendations about the CMC list to CalRecycle. Additionally, we request that CalRecycle combine the aseptic and gable-top CMCs together into one category. Aseptic and gable-top cartons are baled, marketed, and sold together at Material Recovery Facilities across the country, including within California. Combining the two categories would help harmonize compliance with other EPR programs. Maine, Oregon, and Colorado all have the two categories combined.

Recyclability of Certain Covered Material Categories Identified by the Department

In order to promptly address new information gathered around materials that are "trending towards being considered recyclable", further clarity is needed in Section 18980.3.1 (b). We suggest that the following language be added:

To be considered recyclable under this section, a covered material category must first be preliminarily identified by the Department within 60 days of when the Department publishes a material characterization study update or additional information pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) of subdivision (d) of section 42355.51 of the Public Resources Code. The Department must preliminarily identify a covered material category only if it preliminarily concludes that the following conditions are met:

Evaluations of Covered Materials and Covered Material Categories

Recyclability

Section 18980.3 (a) restricts covered material categories' ability to be considered "recyclable" by requiring that it must satisfy the categorical requirements in SB 343. While we agree with the intent - to ensure that materials considered recyclable have a reasonable probability of being recycled – a careful balance is required. SB 343 is already tipping the scales toward landfilling of recyclable material by placing excessively restrictive requirements on recyclability claims. In the latest "How2Recycle Guidelines for Use" there were significant changes to how fiber-based packaging is being labeled due to SB 343. Several fiber-based packaging formats have been downgraded from "widely recyclable" to "check locally" even though these packaging types pass technical repulpability tests, such as our Voluntary Standard, and are accepted by most mills throughout the U.S. This loss of a label will lead to fiber-based packaging having a higher likelihood of landfilling. Even worse, it could prevent these materials from being sold within the state if they are not determined to be recyclable by 2032. This has far-reaching implications outside of CA. Brand owners and manufacturers will not create packaging specific just for products sold in CA. Instead, CA has a big enough market share that all packaging created for the US market, whether sold in CA or not, will comply with CA requirements. This will lead to the loss of the "Widely Recyclable" label for all impacted fiber-based packaging throughout the U.S., an increase in landfilling of fiber-based packaging, and the loss of a currently robust recovered fiber market for U.S. mills.

Methodology for Recycling Rate Determinations

The weight of fiber is heavily impacted by moisture in a way that other covered materials are not. We recommend that the recycling rate for paper or non-plastic fiber be modified to account for the significant distortion caused by non-fiber elements such as moisture, food contamination, and other materials that increase the weight of fiber. Paper is an unusual material in its capacity for absorbing non-fiber elements in its environment, and without adjustment, the supply of fiber potentially available for recycling would be exaggerated and could introduce substantial inaccuracies in the recycling rate calculations. For example, the ISRI Scrap Specifications Circular (an internationally accepted resource) sets the maximum moisture level of linerboard at 12 percent, meaning one-tenth of the weight of the material could be moisture. More clarity is needed in Section 18980.3.2 (b) (2) (A) how "the weight recycled shall be adjusted to exclude the proportion of the recycled content feedstock derived from materials other than covered material." It is necessary for the fiber industry that moisture, food contamination, and other materials are included in "materials other than covered materials."

It is imperative that the recycling rate is based on the weight of the covered materials sent to be recycled, not on the incoming material weight at a responsible end market. Currently, the language "at the point that the material is sold or transferred by a responsible end market as feedstock" used throughout Section 18980.3.2 lacks the clarity needed to ensure that this is a recycling rate calculation. Without this clarity and

as currently written, the recycling rate calculation could instead be a recycling yield calculation. The concept of yield is separate and distinct from the calculation of recycling. Subdivision (ab) of Section 42041 in SB 54 defines the calculation of the recycling rate as "the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192." To ensure clarity and accuracy in reporting, CalRecycle should use the statutory language of recycling rate from SB 54.

Eligibility for Being Labeled Compostable

AF&PA supports Georgia- Pacific's comments on the need for a different compostable packaging framework. As noted in their comments:

Limiting compostable materials to allowable agricultural organic inputs under the requirements of the United States Department of Agriculture National Organic Program (NOP) excludes compostable polymers that meet ASTM D6400 or ASTM D6868 standards and are accepted at industrial composting facilities throughout the country and in parts of California. This unnecessarily narrows the definition and undermines market innovation in the composting space. The reference to the NOP, combined with the overly broad definition of "plastic" in Section 18980.1(a) noted above, makes for an unworkable limitation. This approach will result in the elimination of paper-based food service ware as CAA acknowledges that all fiber-based food service ware contains plastic under the definition in SB 54. Eliminating composting as an end-of-life option for food service ware will result in less collection of food waste overall, contrary to the language and the intent of SB 54.

Responsible End Markets

Responsible End Market Criteria

Markets for recycled materials are complex and dynamic. Manufacturers in proximity to each other can work together to use each other's waste or by-products, i.e. "incompatible materials," as raw materials to reduce their environmental impact and create a more circular economy. However, the provision in Section 18980.4(a)(3) requiring an entity to send incompatible materials for further processing assumes that these materials can be processed further and that there is always a cost-effective process to collect, sort, and send the incompatible material to a viable end market. Not all incompatible material may be suitable for further sortation. The current definition of incompatible materials as "covered material that a receiving responsible end market is not designed, permitted, or authorized to recycle, as defined in subdivision (aa) of section 42041(aa) of the Public Resources Code, or does not recycle for any other reason" lacks the clarity that the paper industry needs to meet the requirements of SB 54. It would be helpful to receive further detail on specific materials that meet the definition of "incompatible materials," and if it is facility-based, how and by whom the decision is made. This provision should be removed or edited to include language that appreciates the complexities of the separation requirements and logistics for shipping materials. If this provision is not removed or edited, further information is needed on how CalRecycle will help develop markets for these "incompatible materials" so that REMs are not penalized.

We agree with Tetrapak's suggested language for Section 18980.4:
A) For incompatible materials that the end market determines can be further processed and recycled cost-effectively, the entity sends materials to entities that are authorized to further process and recycle the material.

End Market Identification
We ask that in all requests for information to REMs, such as applications, that the rules to comply with Section 18980.14 "Designation of Trade Secrets and other Non-Disclosable Information" be included.

End Market Compliance Audits and Verification
We are concerned that the requirement in 18980.4.2 (c) (1) that "information that demonstrates a REM met or exceeded its average yield threshold" will be included in the Annual Report pursuant to subdivision (c) of section 18980.9.1. Sharing individual facility yield information negatively impacts each facility's strategic advantage in the marketplace. Instead, we support reference to existing industry standards for recyclability and repulpability. In the Approved Program Plan for the State of Oregon, Circular Action Alliance granted domestic paper mills an exemption for paper yield verification. They came to this conclusion based on input from us, the Technical Association of the Pulp and Paper Industry, and Moore & Associates that overall yield performance in the U.S. is never below 60%. We suggest that CalRecycle adopt a similar yield exemption for domestic paper mills.

The proposed annual compliance audits by an independent third-party in Section 18980.4.2 (a) is excessive and would be prohibitively costly with no corresponding benefit. If audits do occur, they should be prioritized on an "as-needed" basis.

We are concerned by the requirement in 18980.4.2 (b) that a "PRO or Independent Producer shall include the findings of any compliance audit in the annual report. It is imperative that these compliance audits do not include any trade secret or sensitive information.

End Market Development
As currently drafted, there is no limit to the potential investment needed to support end markets. This puts the PRO and producers at unlimited financial liability. There should be limitations placed on the extent to which a PRO needs to support end markets. We suggest that this limitation be based on the definition of viability in SB 1335 that states that "material is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value." The PRO should not create a fee structure that would subsidize material that fails to meet this test for market viability. The implementation of a spending cap would help ensure that SB 54 is "economically efficient and practical."

Producer Compliance
We are concerned that the requirements in 18980.5 (d) are too restrictive on producers. Producers that become a participant pursuant to subdivision (b) of that section should

have an appropriate amount of time to gather and submit their supply data for CY 2023 rather than needing to supply that data at the time of application.

Fee Schedule

The charges to participant producers to cover the costs of the environmental mitigation requirements of section 42064 of the Public Resources Code should only be applied to participant producers that produce materials that are targeted by the mitigation requirements. Section 18980.6.7 (a) (1) should be updated to reflect that.

We suggest that the base fee calculation described should include the addition of "non-exempt" as shown below in Section 18980.6.7:

"Article 6 (e)(2)(A) A PRO shall first calculate the base fee for each covered material category applicable to the producer. The base fee for a covered material category shall be equal to the [base fee rate of a covered material category (BFRCMC)] times the [weight of non-exempt covered material of that covered material category sold, distributed, or imported in or into the state within the previous calendar year (WCMSDI)]: BFRCMC x WCMSDI = Base Fee."

Additionally, we suggest deleting "or requires test results" from 18980.6.7 (h) as the requirement for testing seems to imply the material has detrimental environmental impacts. A material might have superior environmental attributes but require testing in a recycling or composting system to ensure compatibility.

The credits to producers in 18980.6.7 (j) (1) should apply to all covered materials, not just plastic. Additionally, "renewable" should be associated with a timeframe of replenishment and credit should only be given to sustainably sourced renewable material.

In general, we have concerns about the per-ton fee schedule covered materials are subject to under the Act. This structure risks requiring highly recyclable, but heavier, materials to subsidize materials with a low recycling rate that are lightweight. Fee structures must account for differences in recycling performance, end market maturity, and marginal systems costs or else they will inadvertently penalize materials that already meet or exceed the statute's objectives, such as paper. We caution CalRecycle to carefully examine the future fees. OR and CO currently have fees that incentivize the use of plastic over other covered materials, which is antithetical to the proposed goals of all EPR legislation.

Source Reduction Baseline Report

We request that the July 1, 2026 deadline for the Source Reduction Baseline Report in Section 18980.9 be extended 12 months to July 1, 2027. Companies need sufficient time to submit their initial supply reports to provide accurate and reliable data at the level of detail required around plastic components to comply with SB 54. As noted in our *De Minimis* comments above, producers don't have precise data on the trace amounts of non-fiber elements incorporated into their products. Gathering this information

requires extensive coordination across multiple tiers of the supply chain. Additional time enables companies to better understand, interpret, and report on the data required.

ISO/IEC 17025: 2017 Accreditation

The draft regulations require ISO 17025 accreditation for several different sections: 18980.1, 18980.3, and 18981. While we recognize that ISO 17025 accreditation ensures analytical quality and consistency, it is important to acknowledge that such accreditation is not currently available for industry-developed analytical methods and certification schemes. As a result, mandating ISO 17025 accreditation for all analyses may inadvertently exclude well-established industry protocols and create unnecessary barriers to compliance.

To address this, we strongly recommend that the regulations provide for a reasonable grandfathering period for data generated under existing, non-accredited methods, as well as a phased implementation timeline for the accreditation requirement. requirement. This approach would enable producers and laboratories to adapt to the new standards without disrupting
ongoing operations or invalidating valuable historical data. Furthermore, the regulations should allow for the continued
use of industry-recognized testing schemes where ISO 17025 accreditation is not feasible.

Governance Concerns

Extended producer responsibility is a unique policy concept that allows a non-governmental entity to exercise
consequential, quasi-governmental powers such as fee-setting, and other restraints on market access. It is incumbent
upon CalRecycle to exercise diligent oversight, require the highest standards of transparency, and provide for an
adequate process and opportunity for stakeholder input on key PRO decisions.

Standardized Regulatory Impact Assessment (SRIA)

We are concerned that the results of “Alternative 1: Less Stringent Classification of Plastic Covered Materials” are based
on incorrect assumptions. In the reason for rejecting, it is mentioned that “robust recycling infrastructure does not exist
for packaging such as plastic-lined mailing pouches and bakery boxes with plastic windows. …. and it is likely they would be disposed due to how difficult they are to recycle.” This statement does not reflect the recyclability of polycoated fiber-based packaging and fiber-based packaging with plastic components. We encourage a re-assessment of this alternative that includes the correct assumptions about polycoated.

The following linked data supports the strong and growing market for polycoated fiber-based packaging, via paper cups as an example. A number of large cities, including San Francisco, are accepting paper cups in their recycling bins.

1. FAQs on Recycling Paper Cups for Paper Mills
2. End Markets for Post-Consumer Paper Cups
3. Paper Mill Commitment

More resources can be found on the Foodservice Packaging Ins◆tute's Paper Cup Resource page, linked here.

Thank you for your considera◆on of our comments. We appreciate the ongoing collabora◆on between AF&PA and CalRecycle to advance a sustainable recycling system. We remain available to discuss the feedback herein in greater detail and look forward to your response. Please contact Shoshana Micon, Manager, Recycling and Packaging Sustainability, at shoshana_micon@afandpa.org or Julie Landry, Vice President, Government Affairs, at Julie_landry@afandpa.org if you have any further questions.

Sincerely,

Mark Pits
Interim Vice President, Industry Affairs
American Forest & Paper Associa◆on

Response to O-21-1

Comment rejected. No response is necessary to any portion of this comment except for the one labeled "Categorically Excluded Materials" because that is the only portion that concerns revisions to the 45-Day Changes. CalRecycle cannot parse the commenter's assertion that the changes in section 18980.2(a)(2) "risk an unintentional ban of highly recyclable fiber-based products." The only possible effect of section 18980.2(a)(2) is to exclude certain types of packaging from regulation under the Act. It cannot impose new restrictions. Regarding the timing of "when this exemption begins for producers," no clarification is needed. Each proposed regulation is not required to state its effective date, and there is no basis for interpreting this specific regulation as taking effect later than the effective date of the rest of the proposed regulations.

O-22: The Global organization for PHA (Anindya Mukherjee)

Comment O-22-1

February 13, 2026
Public Comment - SB-54 Draft Regulations
GO!PHA commends CalRecycle for its leadership in reducing plastic waste and advancing a circular economy through SB-54. The proposed revisions however, intensify a categorical, material-specific compliance framework that disproportionately impacts novel, bio-manufactured materials. By reducing the value of established FDA food-contact approvals, expanding the use of USDA National Organic Program (NOP) criteria, and by applying a legacy definition of "plastic" that treats bio-processed polymers the same as conventional fossil-based plastics, the revised framework excludes materials that are verified as safe, low-impact, and environmentally preferable.

This approach limits market access for innovative solutions and constrains growth in California's and the United States' bio-manufacturing sector.

Reduced recognition of verified food safe packaging

We appreciate CalRecycle's effort to address methodological concerns related to broad exclusions; the new draft replaces performance-based criteria and relies on evaluation with categorical eligibility rules rooted in the USDA-NOP criteria. Though framed as contamination safeguards, this shift moves away from science-based assessment of safety, functionality, and environmental performance. Notably, the recent NOSB Technical Review of Compostables and subsequent National Organic Standards Board decision rejected broad category based decisions in favor of case-by-case evaluation, citing that compostable materials vary significantly in origin, chemistry, performance, and environmental impact.

SB-54 must apply a similar principle, grounded in measurable outcomes. Compostability assessments should preserve contamination safeguards while relying on demonstrated safety and overall environmental performance. If implemented with consideration for composting infrastructure realities and material innovation, FDA-approved and certified compostable packaging will increase organic waste diversion to industrial composting and strengthen and improve the functioning of a circular system in California. Additionally, SB-54 must ensure that the compostable materials are managed effectively by addressing implementation gaps and providing support to enhance their compatibility with existing systems.

Recommendation

When novel materials are subjected to overlapping and inconsistent review processes instead of clear safety and performance criteria, policies unintentionally favor incumbent conventional materials that are known to be harmful to industrial composting and to the environment. A forward-looking SB-54 framework must regulate responsibly while enabling innovation aligned with California's and United States' environmental and economic objectives. We urge CalRecycle to use performance-based indicators to demonstrate environmental safety and further advance waste diversion to achieve California's broader circularity goals. Regulatory ambiguity and overlapping and conflicting review requirements impede market access, weaken investor confidence, and delay commercial scale-up of sustainable materials, particularly those developed using advanced biotechnologies.

Contact:
Anindya Mukherjee
Co-Founder & Executive Board Member
Global Organization for PHA (GO!PHA)
EIN: 92-3564213
anindya.mukherjee@gopha.org | 919 803 9079

1GO!PHA Public Comment (2024) SB-54
2PHAs in emerging recycling technologies for a circular materials economy, BOTTLE Consortium, NREL, U.S. DOE.
3NOSB Technical Review of Compostables, USDA.

4EPR Framework For Compostable Packaging, Center for Circular Economy, Closed Loop Partners.
5Charting the Future of Biotechnology, National Security Commission on Emerging Biotechnology (NSCEB).
GO!PHA is a UNEP-accredited organization that is actively involved in the UN Treaty on Plastics negotiations. EU Transparency Number: 946264840278-51
6Koller, Martin & Mukherjee, Anindya. (2020). Polyhydroxyalkanoates – Linking Properties, Applications and End-of-life Options. Chemical & biochemical engineering quarterly. https://doi.org/10.15255/CABEQ.2020.1819
7Mukherjee, Anindya & Koller, Martin. (2022). Polyhydroxyalkanoate (PHA) Biopolyesters - Emerging and Major Products of Industrial Biotechnology. The EuroBiotech Journal. https://doi.org/10.2478/ebtj-2022-0007
8Koller, Martin & Mukherjee, Anindya. (2023). Polyhydroxyalkanoate (PHA) Bio-polyesters – Circular Materials for Sustainable Development and Growth. Chemical and Biochemical Engineering Quarterly. https://doi.org/10.15255/CABEQ.2022.2124
9Koller, M., Mukherjee, A., Obruca, S., Zinn, M. (2022). Polyhydroxyalkanoates (PHA): Microbial Synthesis of Natural Polyesters. In: Rehm, B.H.A., Wibowo, D. (eds) Microbial Production of High-Value Products. Microbiology Monographs, vol 37. Springer, Cham. https://doi.org/10.1007/978-3-031-06600-9_8
10 Koller, Martin & Mukherjee, Anindya. (2022). A New Wave of Industrialization of PHA Biopolyesters. Bioengineering. https://doi.org/10.3390/bioengineering9020074

Response to O-22-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes. Although the comment purports to concern the proposed changes, CalRecycle cannot discern how it does so. Instead, the comment describes various general, abstract concepts with no reference to any particular regulatory provision. For example, the comment states that "the new draft replaces performance-based criteria and relies on evaluation with categorical eligibility rules rooted in the USDA-NOP criteria," but CalRecycle has not revised the proposed regulations in any way related to "USDA-NOP" criteria. It is not clear how that statement relates even to the unchanged portions of the proposed regulations. The comment appears mostly to concern the U.S. Department of Agriculture's National Organic Program and whether packaging is considered "compostable." Those issues are not relevant to the changes embodied in the 15-Day Changes.

O-23: Wine Institute (Anna Ferrera)

Comment O-23-1

Our comment letter is submitted as a file below/attached. Please contact me with any questions about this information.

Anna Ferrera

Director, Legislative and Regulatory Affairs
(916) 216-2160

February 13, 2026

Director Zoe Heller
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

Via Public Comment Portal: SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Final Proposed Regulations

Dear Director Heller:

On behalf of Wine Institute, a public policy advocacy organization representing over 1,000 wineries and affiliated organizations in California, I appreciate the opportunity to provide comments on the proposed final regulatory language to implement the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act), posted by CalRecycle on August 22, 2025.

The Act establishes an extended producer responsibility (EPR) program focused on reducing plastic but also impacts all product packaging in California with certain exceptions, to meet a 100% recyclable or compostable goal for single use packaging and single use food service ware by 2032. SB 54 leaves much of the administration and guidance of the EPR program to the Professional Responsibility Organization (PRO), which is the Circular Action Alliance (CAA), selected by CalRecycle to administer the program.

Our winemakers create an agriculture-based product that has been manufactured and exported globally for generations. California is the fourth largest wine producer in the world. Our wine industry makes a significant contribution to the state and the nation by providing quality jobs, bolstering economies through hospitality, taxes and tourism, and enhancing communities through environmental stewardship and sustainable farming practices. In California, wineries employ 422,000 people, paying $25.9 billion in wages annually, $7.9 billion in taxes annually, and generating $73 billion in economic activity in the state.

In 2024, our wineries committed to a circular economy and began entering the California Beverage Container Recycling Program (Bottle Bill). Over 4,000 wineries registered and are moving forward to comply with recycling beverage containers in a significant step forward to further the state’s recycling goals. More recently, Bottle Bill program regulatory language per SB 1013 (Atkins, Chapter 610, Statutes of 2022), moved forward last year.

California wineries are in the unique position of potentially entering two state programs focused on a circular economy, with recycling and source reduction goals, deadlines, and fees at a time when our industry is also grappling with the impacts of tariffs on wine export markets and sales, inflation and historically high production costs. This dual obligation will most certainly raise costs, disrupt operations, and undermine the competitiveness of California wines and wine grape growers in both domestic and international markets.

Recommendation: The SB 54 proposed program language should revert to CalRecycle's previous interpretation to exclude secondary and tertiary packaging with CRV beverage containers from the EPR program in ARTICLE 2:

Exemption for Secondary and Tertiary Packaging for Wine Products
ARTICLE 2: Covered Material and Covered Material Categories Section 18980.2.

Categorically Excluded Materials – CRV Container Packaging

The current proposed final regulatory language considers CRV beverage containers excluded from the SB 54's EPR program. However, packaging that keeps these products safe and secure, is not. Secondary and tertiary packaging in commercial and industrial operations, according to the current language, are considered covered materials to be accounted for under the program. This was a change from the May 2025 version that excluded CRV beverage container packaging as well as the beverage containers.

SB 54 was enacted with exemptions and categorical exclusions that the Legislature placed in various parts of the statute such as food and agriculture and medical goods, along with CRV containers. Wine Institute aligns itself with CalChamber's 2025 and 2026 comments regarding the exclusion of CRV beverage container secondary and tertiary packaging, we agree specifically that:
• When the Legislature drafted SB 54 and specified what was *not* a "covered material", it *exempted* in PRC § 42041(e)(2)(A)-(G)) all the packaging associated with that category, which the Department correctly assessed includes secondary and tertiary packaging associated with the primary regulated good.

• The Legislature's recent expansion of the Bottle Bill to include wine and distilled spirits through SB 1013 (Atkins, 2022) was the product of years of debate over how best to handle the unique packaging streams associated with these industries. **Industry stakeholders agreed to participate because the CRV program would manage their packaging without subjecting them to fragmented or overlapping requirements from multiple state programs.** This 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.

• Reading SB 54's beverage container exclusion narrowly would create direct conflict by forcing producers to comply with overlapping and inconsistent mandates under

both the Bottle Bill and SB 54.

• When taken with the other exemptions in Public Resources Code section 42041(e)(2), the “beverage container” exclusion **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 “not covered material” category We strongly agree with CalChamber’s comments and analysis that “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.” It is more likely that the Legislature intended the beverage container exclusion to cover the full packaging chain associated with CRV products and that a contrary reading would make the CRV provision the sole outlier in the section.

The term “beverage container” should be properly understood as the whole packaging system associated with CRV-regulated products, thereby preserving consistency in the exclusions section of SB 54. *It is contrary to the statute to now force wineries who voluntarily integrated into the Bottle Bill under SB 1013 with SB 54 compliance on secondary and tertiary packaging associated with the beverage containers.*

Recommendation: Cal Recycle’s May 2025 draft regulation was correct in treating all tertiary and secondary packaging associated with CRV beverages as “not covered material.” The current proposed final regulation should **revert to this interpretation and exclude secondary and tertiary packaging associated with the Bottle Bill in ARTICLE 2: Covered Material and Covered Material Categories Section 18980.2. Categorically Excluded Materials.**

Other areas of significant concern by Wine Institute:

Uniqueness of Wine Product Packaging

SB 54 requires producers to meet certain source reduction deadlines for packaging, but the **primary packaging for wine is often purchased and used to contain products a year or two or more in advance of sale.** That may make it difficult to determine source reduction or use of recyclable materials over time.

Proposed language fails to take into account the unique packaging processes that occur with wine products.

Producer Compliance - ARTICLE 5: Requirements for Producers Section 18980.5.

Wine Institute is concerned with the deadlines for supplying baseline data given the delays in final regulation approval. The PRO should allow for a good faith phase-in plan for the submission of 2023 data upon initial registration with the PRO. Requiring complete data for 2023 could be problematic as the types of data may or may not have existed during this timeframe. Allowing producers to provide available data with a

gradual phase-in process over subsequent years will incentivize more participation into the registration process and would be a more realistic, workable solution for producers.

Relevant sections:

“(b) Pursuant to subdivision (b) of section 42051 of the Public Resources Code, each producer shall, within 30 days after the effective date of this chapter, apply to become a participant of an approved PRO or apply to be an Independent Producer subject to the requirements of section 18980.5.1.”

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

Recommendation: Given the delay in promulgating the proposed final SB 54 EPR language, the timing requirements in 18980.5 (d) are unrealistic for producers/participants pursuant to subdivision (b) of that section. Potential producers should be given an appropriate amount of time to gather and submit their supply data for calendar year 2023 rather than needing to supply that data at the time of application.

“Exemptions” Require EPR Program Registration and Fees

Exemptions for Materials with Documented High Recycling Rates, Unique Challenges, and Small Producers from the EPR packaging program should not be required to register as producers and pay fees for an EPR program they are not part of.

-Materials with Documented High Recycling Rates: **Exemptions for Specific Material with Demonstrated Recycling Rates - Section 18980.2.3.**
Specific packaging or food service ware collected through established alternative programs (outside of standard curbside collection) and consistently achieving high recycling rates (e.g., 65% for 2024-2026, 70% thereafter) may be eligible for an exemption.
“(2) **The person shall also be considered a producer for purposes of the registration** requirements provided in section 18980.10, regardless of whether the Department approves the exemption.”

-Unique Challenges: **Exemptions for Certain Covered Materials – Section 18980.2.4.**

Justification of additional requirements for a “phase-in” of covered material with unique challenges not in statute. “Clearly and convincingly” standard is subjective.:

(4) (A) (viii) A proposed plan pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of section 42060 of the Public Resources Code to **phase the covered material into the requirements of the Act** or an explanation of how the nature of the unique challenges makes such a plan unfeasible or unnecessary in which event the

applicant shall explain why a plan is unfeasible or unnecessary to prevent the exemption, if granted, from interfering with the intent of the Act… Such a proposal shall address, at a minimum, the requirements of the Act that the covered material currently satisfies, a timeline for when the covered material is anticipated to satisfy all requirements of the Act, and progress requirements for each year of that timeline with respect to addressing the challenges described in the application and otherwise progressing toward full compliance with the Act. shall be approved if the application **clearly and convincingly** establishes both of the following: 46 (A) Compliance with the Act is not possible without increasing overall risks to health or safety or risks of significant effects on the environment compared to the risks posed by exempting the packaging or food service ware. (B) The exemption will not make it more difficult for any other producer to satisfy the requirements of section 42050 of the Public Resources Code.

-Small Producers: **Section 18980.5.2.:**

Producers with gross sales within California under $1 million in the most recent calendar year may apply for an exemption. The application is subject to approval and “applicants” **must register as producers** before they are considered exempt.

Registration fees and accounting obligations for a program small producers are not part of will surely add to the costs of our products to consumers.

Recommendation: Entities exempted under the program should not be required to register as a producer, pay fees, or be subject to enforcement penalties. They are exempt. These entities could be allowed to simply self-certify and then be exempted entirely from the program.

Scarcity of Materials with High Recycling Rates

Wineries are seeking these high recycling rate materials but often they are scarce or simply not available.
• Will there be an investment in developing these materials from EPR funds?
• What will be the recourse if entities cannot meet the goals due to scarcity of product?

List of De Minimus Material Exclusion - Section 18980.2.2.(b)(1)(B)(ii) and (2)(C) Exclusion of Certain Types of Packaging

This section may exclude labels, adhesives, and other small components of wine bottles or boxes that wineries will need to have more clarity on such as corks and capsules.

PRO may designate components as de minimus per **Section 18980.2.2(b)(3) and (4)**

“(3) The PRO or an Independent Producer may request that the Department deem certain components or groups of components to be of de minimis weight or volume.”

CalRecycle must publish a list of such de minimus components:

"(4) The Department **shall publish on its website a list of its components and groups of components,** whether proposed in requests submitted pursuant to paragraph (3), alleged to be of de minimis weight or volume in response to a notice of violation, or otherwise identified by the Department, **that it has determined to be of de minimis weight or volume**." *Wine corks, capsules or other small components may be considered de minimus.*

Recommendation: We request that CalRecycle and CAA allow postponement of this data collection until final decisions on de minimis exclusions are made to avoid collection of data that will not be needed for future reporting.

Registration Deadlines in Statute vs. those set by the PRO – ARTICLE 5: Requirements for Producers – Section 18980.5. Producer Compliance

SB 54 statute states that producers must register within 30 days of the official enactment of the regulations or upon becoming a producer (for entities established before January 1, 2027), or within six months for those becoming producers on or after that date.

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

SB 54 requires that the PRO deliver a detailed report outlining plastic covered material data from the 2023 calendar year to CalRecycle by July 1, 2026. The program must be fully operational by January 1, 2027.

CAA set a deadline of September 5, 2025, for producer registration and posted this on their website. This is not in statute, however, and proposed regulatory language is not final as of this writing.
Recommendation: Given the delay in implementation due to required comment periods and review requested by the Governor, these deadlines are unrealistic and should be re-set to provide more time for potential participants to gather and submit accurate information.

Penalties for Non-Compliance by PRO - Section 18980.13.2
Participants may be penalized if actions taken by PRO on their behalf causes their noncompliance."Any entity, such as a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of the Act or this chapter, such participants shall not be exempt from penalties on the grounds that their noncompliance was caused by the PRO's conduct ."

• What is the legal basis for this language that may cause a participant (who must rely on a PRO's submissions and program compliance) to be penalized by CalRecycle for a PRO's actions/non-compliance?

Recommendation: This section should be reconsidered.

Early Fees - Section 18980.6.7.(a)

Relevant Language: Prior to approval of an initial plan and for the two years following that approval, a PRO shall charge all participant producers a fee based on specific items set forth in subdivision (b) of section 42053 of the Public Resources Code including estimated costs of implementing the plan, the needs assessment, and reimbursement to CalRecycle for administration, implementation, and enforcement.

The PRO/CAA requested and collected input only from those that had already registered in 2025 as producers regarding their proposed calculation for early fees. For those who do not yet know their status as producers - input on early fees was not considered.

Recommendation: The early fee process should be suspended until all potential participants provide input on early fees.

Governance by PRO

Wine Institute highlights our general concern about the unique governance structure and authority CalRecycle grants to the PRO under this packaging EPR program and potential for conflict of interest and anti-trust. We strongly believe that CalRecycle must exercise extraordinary and consistent oversight and transparency in this matter and establish a process for stakeholders to provide timely and direct input to the Department on PRO actions/decisions.

Most Recent Amendments to the Proposed Language:

Food and Agricultural Commodities and Safety

We appreciated that the earlier draft considered federal law and guidelines for food safety to ensure that California's food supply chain was adequately protected, organic waste minimized, and products remained affordable, however, the new language essentially erases that earlier promise. We agree with CalChamber and agricultural community concerns that the proposed section 18980.2(a)(2) - Categorically Excluded Materials - allowing only "mandatory" federal standards and guidelines to establish a direct conflict and exclusion, would extremely narrow the scope of the exemption for food safety.

The new language, if approved, would also most certainly mean that producers of agricultural commodities would be subject to program requirements and fees that will likely result in higher prices to consumers for grapes, juice, and produce. We strongly support the recommendations CalChamber and agriculture groups are making for the newly proposed language. Enhancing recycling and achieving circularity should not expose Californians to increased risks regarding food safety greater food waste and higher prices.

Finally, Wine Institute is deeply concerned about the broad discretion CalRecycle and the Circular Action Alliance have in decisions related to exclusions that may be based on their assessment of suitable packaging alternatives or other undefined criteria for a manufacturer's product.

Please contact me with any questions regarding these comments.

Sincerely,
Anna Ferrera
Director, Legislative and Regulatory Affairs Wine Institute

Response to O-23-1

Comment rejected. Except with response to the final portion of this comment, no response is necessary because it does not concern any revisions in the 15-Day Changes. In the final portion, "Food and Agricultural Commodities and Safety," the commenter asserts that addition of use of the word "mandatory" narrows the scope of packaging that might qualify for an exclusion pursuant to section 18980.2(a)(2). The commenter is incorrect, as explained in responses to comments B-3-1, B-50-1, O-35-2

The commenter also expresses concern "about the broad discretion CalRecycle and the Circular Action Alliance have in decisions related to exclusions." That concern is misplaced with respect to Circular Action Alliance, which has no role in the process described in section 18980.2(a)(2). With respect to CalRecycle's discretion, including the assertion that CalRecycle may base its decisions on its "assessment of suitable packaging alternatives or other undefined criteria," CalRecycle rejects this comment for the reasons stated in responses to comments O-49-6, B-56-2, and O-31-5.

O-24: American Feed Industry Association (Louise Calderwood)

Comment O-24-1

February 13, 2026

Csilla Richmond
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B

Sacramento, CA 95814

By electronic submission via Public Comment Form

Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act – Permanent Regulations

Dear Ms. Richmond:

On behalf of the American Feed Industry Association (AFIA), we respectfully submit the following comments regarding the proposed permanent regulations implementing SB 54.

Founded in 1909, the AFIA, based in Arlington, Va., is the world's largest organization devoted exclusively to representing the business, legislative and regulatory interests of the U.S. animal food industry and its suppliers. The organization's membership is comprised of over 600 domestic and international companies that represent the total feed industry – manufacturers of commercial and integrated feed and pet food, ingredient suppliers, pharmaceutical companies, industry support and equipment manufacturers. AFIA's members manufacture more than 75% of the feed and 70% of the non-whole grain ingredients used in the country.

Packaging used by animal food manufacturers must perform reliably across diverse agricultural and retail environments, including bulk handling systems, rural storage conditions, long distribution channels, and variable temperature and humidity exposures. Packaging performance is directly tied to animal health, availability, biosecurity and feed safety. The extended shelf life afforded to animal food by packaging reduces food waste as products remain safe and fresh as they move through the supply chain.

The AFIA supports California's efforts to reduce plastic pollution and promote more sustainable packaging systems. At the same time, it is critical that the implementation of SB 54 account for the operational realities and federal safety requirements governing animal food packaging.

Operational and Infrastructure Considerations

Animal food packaging is engineered to protect products that frequently contain high fat content, sensitive vitamins and minerals, moisture-sensitive ingredients, and, in some cases, medicated components. Packaging must resist oxygen transmission, moisture intrusion, pest contamination and physical degradation during transport and storage. In agricultural settings, packaging is often exposed to mechanical stress, palletization, outdoor storage conditions and handling with bulk equipment.

Currently, many dry animal food products rely on multilayer flexible packaging designed to provide strength and barrier protection. While innovations in recyclable flexible films are emerging, the infrastructure necessary to collect and process these materials at scale remains limited. Manufacturers are actively exploring next-generation solutions;

however, reformulation, stability testing, Food and Drug Administration food-contact review, and validation of new packaging systems require significant lead time and capital investment. Absent appropriate accommodations, animal food manufacturers could face compliance timelines that outpace both material science advancements and recycling infrastructure development.

Federal Food Safety Framework Governing Animal Food Packaging
Animal food is regulated under a comprehensive federal framework that integrates packaging safety into broader food safety controls.

Under the Federal Food, Drug and Cosmetic Act (FD&C Act), food is deemed "adulterated" if it contains harmful substances or is prepared, packed or held under insanitary conditions (21 U.S.C. § 342(a)). Packaging materials that contact animal food must comply with FDA's food-contact substance requirements, including the food additive provisions (21 U.S.C. § 348), the Food Contact Notification program and regulations governing indirect food additives at 21 CFR Parts 174–178.

These requirements ensure that packaging materials are safe for their intended use and do not result in chemical migration or contamination under expected conditions of use. Introducing alternative materials to satisfy recyclability or compost criteria may necessitate additional FDA review and extensive product validation. In addition, the Food Safety Modernization Act (FSMA) requires animal food facilities to implement hazard analysis and risk-based preventive controls (21 U.S.C. § 350g; 21 CFR Part 507). Packaging is a component of these preventive control systems. Facilities must evaluate hazards associated with packaging materials and ensure that packaging is suitable to protect the food and prevent contamination (21 CFR § 507.27).

Changes to packaging materials, therefore, implicate hazard analyses, preventive control plans, supplier verification programs, stability testing, and in some cases, labeling updates across multiple jurisdictions.

Shelf-stable and Thermally Processed Products
Certain animal food products, including low-acid canned foods, are subject to additional FDA regulations designed to prevent the growth of pathogens, such as Clostridium botulinum (21 CFR Part 113). Compliance depends on packaging that can withstand thermal processing, maintain hermetic seals and preserve sterility throughout the product's shelf life.

At present, many materials that meet recyclability or compost goals do not provide equivalent performance under these conditions. Manufacturers must ensure that any packaging changes do not compromise sterility, seal strength or long-term product stability.

Definition of "Food" Under California Law
The AFIA is concerned that proposed section 18980.1 defines "food" by reference to the California Health and Safety Code § 113781, which is limited to substances intended for

human consumption. This definition may inadvertently exclude animal food packaging from the accommodations provided in section 18980.2.
Both federal law and California's Sherman Food, Drug and Cosmetic Act define "food" to include articles used for food or drink for "man or other animals" (21 U.S.C. § 321(f); Health & Safety Code § 109935). California has long regulated animal food within the same statutory framework as human food for purposes of safety and adulteration standards. Aligning the regulatory definition in SB 54 with Health & Safety Code § 109935 would ensure consistency across state law and avoid regulatory ambiguity.

Avoiding Conflicting Legal Obligations
If SB 54 were interpreted to require packaging changes that undermine FDA's authorization requirements, preventive controls or validated thermal processing systems, manufacturers could face conflicting legal obligations. State requirements should be implemented in a manner that accommodates federally mandated food safety standards and validated packaging systems.

Requested Regulatory Clarifications
To ensure harmonization between environmental objectives and animal food safety requirements, the AFIA respectfully requests that CalRecycle:

1. Revise the definition of "food" in section 18980.1 to align with Health & Safety Code § 109935;
or
2. Clarify that animal food packaging subject to FD&C Act and FSMA requirements qualifies for the accommodations provided in section 18980.2; and
3. Include language specifying that the SB 54 regulations shall not be interpreted to require packaging modifications that would conflict with FDA requirements under 21 U.S.C. §§ 301 et. seq. and 350g, or 21 CFR Parts 174–178, 507, or 113.

Conclusion
Animal food packaging plays a critical role in maintaining feed safety, protecting animal health and supporting California's agricultural economy. AFIA members are committed to advancing sustainable packaging solutions and investing in emerging technologies. Successful implementation of SB 54 will depend on regulatory clarity, realistic timelines and alignment with established federal food safety requirements.

We appreciate the opportunity to provide these comments and look forward to continued engagement with CalRecycle.

Sincerely,

Louise Calderwood
Director of Regulatory Affairs
American Feed Industry Association

Response to O-24-1

CalRecycle rejects this comment for the reasons stated in response to comment O-3-1, which raises the same concerns and offers the same recommendation as does this comment.

O-25: Californians Against Waste (Tony Hackett)

Comment O-25-1

February 13, 2026

Zoe Heller, Director
Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street
Sacramento, CA 95814

RE: Comments and Concerns on January 2026 Proposed Permanent Regulations

Director Heller,

Thank you for the opportunity to submit comments on the January 2026 proposed permanent regulations implementing SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act. We appreciate the Department's continued engagement throughout this rulemaking and recognize the significant effort required to translate a statute of this scope and complexity into an enforceable regulatory framework.

SB 54 is one of the most consequential waste reduction and plastic pollution prevention laws California has enacted in decades, and the regulations promulgated by the Department will determine whether the statute fulfills its promise. The Legislature vested CalRecycle with substantial responsibility to implement SB 54 in a manner that drives real source reduction, ensures recycling and composting occur in practice and at scale, and protects public health and environmental justice communities. For these reasons, it is critical that the final regulations be precise, durable, and firmly grounded in statutory intent, so that the law delivers meaningful and lasting reductions in plastic pollution rather than allowing business-as-usual practices to persist through regulatory gaps.

While the most recent amendments address a limited subset of concerns identified during the 45-day comment period, they do not resolve the majority of substantive issues previously raised by our organization and allied stakeholders. Our broader concerns regarding responsible end markets, the regulations' failure to effectively exclude technologies that harm public health, the environment, and environmental justice communities, and the risk of regulatory loopholes that undermine the statute's intent remain outstanding and unaddressed.

Response to O-25-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-25-2

With regard to the categorical exclusions, the regulatory language must shift to treat these as temporally-bound, limited exemptions rather than permanent exclusions. The increased use of the term “mandatory” with regard to federal USDA or FDA requirements appropriately aligns the regulations more closely with the statute and helps limit exclusions to situations where federal preemption clearly attaches. However, additional clarification is still necessary to ensure that this narrowing is not undermined elsewhere in the regulatory text. In particular, references to “all applicable mandatory standards,” “no new unavoidable legal conflict with any law,” and “all legal conflicts” should be clarified to confirm that they refer solely to mandatory USDA or FDA requirements, and not to discretionary guidance, voluntary standards, or non-preemptive legal considerations.

More fundamentally, the structure of the exclusion process remains problematic. As currently drafted, Section 18980.2 establishes a notification-based framework in which exclusions apply by default upon submission of a complete notice, with only optional and open-ended review by the Department. This approach creates a significant loophole: covered material status is suspended immediately upon submission and remains suspended throughout the Department’s review, any requests for additional information, response periods, and even for 180 days following a determination that a notice fails to demonstrate eligibility. In practice, this allows exclusions to remain in effect for eight months or longer— even for notices that ultimately fail—creating strong incentives to submit weak or legally unsupported claims simply to delay (and effectively filibuster) compliance.

SB 54 does not contemplate such automatic or de facto exclusions, nor does it grant CalRecycle discretion to expand the scope of excluded materials through inaction or prolonged review timelines. We strongly urge the Department to replace the current notification framework with an authorization-based process under which materials remain covered unless and until CalRecycle affirmatively determines that an exclusion is legally warranted. This change is necessary to preserve the integrity of the statute and prevent systematic evasion of producer obligations.

As mentioned previously, these exclusions should be treated more as temporally limited exemptions rather than permanent exclusions from SB 54 compliance. Given the rapid pace of technological and market innovation, exclusions should not be permanent. A two-year sunset provision is necessary to ensure that exclusions are periodically reevaluated in light of new packaging alternatives that may satisfy both SB 54 and mandatory federal requirements. Without such a sunset, the regulations risk locking in outdated technologies, stifling innovation, and exceeding statutory authority by effectively creating permanent exclusions not contemplated by the Legislature.

Relatedly, the regulations currently allow producers to submit successive exclusion notices for the same packaging or packaging components, turning the automatic exclusion window into a potentially perpetual loophole. This outcome is inconsistent with the statute's purpose and undermines regulatory certainty. The regulations should prohibit serial reapplications and instead require a substantial waiting period—at least five years—following a failed determination before a producer may reapply for the same packaging or packaging component.

The proposed timelines for Department review and producer responses remain excessive and, in some cases, reward non-responsiveness. Extended response periods following failures to provide requested information incentivize delay and weaken enforcement. Review timelines should be shortened, legal sufficiency should be assessed at the completeness stage where possible, and no exclusion should persist solely due to administrative inaction.

Response to O-25-2

Comment rejected. Regarding the objection to referring to requirements other than those related to USDA and FDA requirements, CalRecycle declines to revise section 18980.2(a)(2) because referring only to those requirements would contradict statute, which refers to "direct conflict with a federal law or regulation." It would also produce nonsensical results because packaging would be considered an "alternative" even though it could not possibly be adopted because it would be illegal, in effect replacing one intractable conflict with another. It would be nonsensical to consider that outcome a resolution of the conflict with federal requirements.

Regarding the alleged loophole, CalRecycle declines to change the process and timeline for reviewing notices because the process reasonably accommodates the operational and financial realities that producers will face when shifting to packaging that resolves the conflict underlying the notice. Those realities and the administrative burden on CalRecycle of an "authorization-based process" would render such a process untenable. The commenter's assertion that section 18980.2(a)(2) creates an "automatic or de facto" exclusion is incorrect; as revised, section 18980.2(a)(2) clarifies that all notices are subject to CalRecycle's initial review. Without the process established in the 15-Day Changes, users of packaging might incur harm despite unavoidable uncertainty over whether packaging ultimately will be determined to be excluded under section 18980.2(a)(2). Furthermore, the revisions in 18980.2(a)(2)(F) adequately address the commenter's concern. If a new notice concerns packaging that is already the subject of notices that CalRecycle has determined to be inadequate or identified as potentially inadequate, that new notice will not trigger the exclusion until CalRecycle determines the exclusion to be justified.

Regarding the suggested "sunset provision," CalRecycle rejects that suggestion for the reasons provided in response to comments I-59-2 (submitted in response to the 45-Day Changes), which offered the same suggestion. Also, the commenter's suggestion would risk having an effect opposite the one the

commenter appears to intend. It could weaken section 18980.2(a)(2) by establishing an exclusion period that might often be longer than would result under the regulation as written because CalRecycle may identify a large number of notices as presenting the same flaw well before the period ends. In other words, establishing a specific duration would create a limited loophole for all such notices.

Regarding the effect of "successive exclusion notices," the commenter is incorrect that section 18980.2(a)(2), as revised, creates a "perpetual loophole." Subparagraph (F) has been added to address that potential. A notice for packaging substantially similar to packaging that is the subject of a previous notice currently in the 180-day period described in subparagraph (E) or any time after it would have no effect until CalRecycle deemed the notice meritorious. The 180-day period only arises when CalRecycle has deemed the previous notice not to justify the exclusion.

Regarding the effect of administrative inaction, CalRecycle rejects this comment because it does not propose a reasonable solution to it. The only solution offered (an authorization-based process) would result in mounting penalties on producers due to circumstances that are out of their control and could only be resolved by incurring large costs that might ultimately become unnecessary. Furthermore, subparagraph (F) limits entities' ability to exploit the process, as described above, and the completeness review described in subparagraph (C) reasonably prevents bad faith submissions from automatically becoming effective until CalRecycle initiates and completes the process described in subparagraph (E). In contrast to the commenter's proposal, the proposed regulation as written balances the need to implement and enforce the Act with operational realities and the Act's mandate that it not cause conflicts with federal requirements.

Comment O-25-3

Finally, we would also like to raise several outstanding concerns with other parts of the regulation that were not addressed in previous iterations of the regulatory development process.

Exclusion of Certain Types of Packaging (§18980.2.2): Definitional Criteria and Public Process.

Expand Scope of Considerations Beyond Process of Composting when Evaluating de minimis Exemptions

Today’s regulatory language evaluates de minimis considerations in part on the basis of if a component or group of components makes “recycling or composting more difficult pursuant to subdivision (h) of section 18980.6.7.” This language specifically focuses on the ease of composting rather than on whether there is a contamination-free, quality end product. This language is unnecessarily problematic in previously unanticipated ways. For instance, a plastic liner or coating on a foodservice ware item wouldn’t necessarily affect the composting process directly, but it would contribute to microplastic

pollution in soils and be an undesirable contaminant in the end product. This example and others like it represent an opportunity to open the floodgates to allowing unlimited product contaminants as long as they don't pose a risk to the general ease of composting. As such, we suggest that language be revised to widen the scope of scrutiny across multiple categories of potential impact, from process to product, ultimately to ensure uncontaminated soil that can be used with confidence on California commercial crops and in residents' community and home gardens

Vague and Insufficient Definitional Criteria for Eligibility Need Further Detail

We remain deeply concerned that the proposed de minimis exemption is drafted in a way that continues to lack enforceable thresholds and opens the door to abuse. While the new text introduces a definition of "independent plastic component" and lays out a multi-factor test for whether a component is of de minimis weight or volume, the operative standards remain vague and subjective.

One major loophole is in the definition of an Independent Plastic Component. The new definition excludes coatings, films, stickers, and labels from being considered "independent plastic components." This could allow producers to continue using problematic films, foils, shrink labels, and barrier coatings while arguing they are de minimis because they are not separately detachable and thus 'independent components.' These are precisely the materials that routinely contaminate MRF streams and frustrate recyclability and compostability, directly undermining the statutory requirement in PRC § 42050(b) that packaging be recyclable or compostable in practice and at scale.

The impact is the creation of a perverse incentive to deliberately fragment packaging into 'non-countable' subcomponents to strategically fall below the de minimis threshold. This risks creating a perverse incentive for packaging design to evolve toward more hidden plastics—small films, detachable liners, and coatings—that erode source reduction and recyclability goals, and frustrate the intent of the law.

While we recognize the need to exempt incidental elements not associated with harm to the environment or human health, the current proposal does not contain the necessary specificity to prevent abuse by ensuring these crucial parameters are respected. By removing objective criteria (such as the prohibition on chemical or thermal separation) and relying on vague, discretionary standards, the draft risks opening a backdoor for widespread noncompliance. Unless clarified, the de minimis provision may encourage a "race to the bottom" in packaging design, contrary to both the intent and the express requirements of SB 54.

Procedural Transparency Should Be Obligatory

The current version permits producers or PROs to submit exemption requests for de minimis designation with no clear public notice, stakeholder input, or third-party review process. Even with the Department's intent to publish approved components online and have other documents available under Public Records Act requirements, the regulations

lack data transparency that is communicated to the public outside of the Department as an intermediary filter. To promote transparency and fairness, all exemptions must be handled through an open process with input from both the advisory committee and members of the public.

Article III: Evaluation of Covered Material and Covered Material Categories Recyclability (§18980.3.): Audit requirements should be strengthened to avoid oversimplification.

Audits must be randomized and representative of the entire supply chain; must be strong enough to ensure compliance.

The regulations currently require annual audits of two intermediate supply chain entities and two end markets when evaluating participant producer compliance. It is unclear if two of each type of facility will be sufficient for a given material type, and a better approach might be to use percentages, along with a framework similar to that established in the SB 1383 Route Review requirements (Cal. Code Regs. tit. 14 § 18995.1), which requires jurisdictions to "have an inspection and enforcement program that is designed to ensure overall compliance with this chapter." Additionally, a percentage-based approach would make more sense than a static number to ensure that audits sufficiently evaluate compliance with the regulations and represent different strata of the market chain itself. For instance, the regulations could require "visits to intermediate supply chain entities and markets that, respectively, collect, process, or recycle 75% of the material under investigation." Having a flexible, percentage-based approach would ensure greater compliance and more certainty with regard to intermediate supply chain entities and end-markets that are fully responsible and receiving just scrutiny.

Independent Third-Party Validation of Postconsumer Recycled Content (§18980.3.4): PCR content calculations must explicitly prohibit the use of mass balance credit methods.

The incorporation of real postconsumer recycled content into products can be a powerful tool to stimulate the demand and usage of recycled materials, creating a financial incentive to increase the recovery of these materials and reducing the dependence on virgin natural resources. It is for this reason that SB 54 encourages producers to use postconsumer recycled content in covered material.

Producers, in California and elsewhere, have argued for the use of mass balance credit methods to be allowed as part of recycled content accounting. If such methods are allowed, this would undermine the effectiveness of SB 54 since mass balance credit methods enable producers to use virgin materials, which are labeled/certified as "recycled" and then claim that they are incorporating recycled content. In some cases, these credit methods can skirt the intent of SB 54 and allow plastic to be turned into fuel to create fake recycled content credits, which are then assigned to virgin plastic. Mass balance credit methods are deceptive and should explicitly not be allowed in the SB 54

regulations since they will incentivize greenwashing rather than real recycling and recycled content.

Article IV: Responsible End Markets
End Market Identification (§18980.4.1): Provisions around recycling technologies are dangerous, inconsistent with statutory requirements, and antithetical to legislative intent

Approval of Non-Mechanical Recycling Technologies

A) Minimum Performance: 'Management…in compliance with a Permit'

Section 18980.4.1(d)(B), when considered in conjunction with the rest of Section 18980.4.1(d), indicates that chemical recycling facilities generating hazardous waste that is produced and disposed of in "compliance with an applicable permit" are allowable under the regulations, disqualifying them as generating "significant amounts of hazardous waste." This means that these technologies are effectively automatically allowed under the regulations, no matter how much hazardous waste is produced, since the litmus test for approval is solely 'substantial compliance' with a permit they would have needed to obtain in order to operate anyway. In effect, this creates a legally tautological requirement under which no amount of hazardous waste would be considered "significant."

By construing the hazardous waste provision in a manner that largely nullifies its operative force, the Department renders the Legislature's deliberate choice of language null and void, contrary to the presumption that each word in a statute serves a purpose. The proposed interpretation contravenes the surplusage canon, a settled principle of statutory construction which requires that effect be given to every word and clause enacted by the Legislature, such that no portion of the statute is rendered redundant, inoperative, or devoid of meaning.

Additionally, compliance with applicable permits may vary by jurisdiction, making enforcement difficult or impossible. Per Section 18980.4.1(d)(B), compliance with permitting may be different in different jurisdictions, and this provision applies to end markets, which may be outside California. This would impose unequal requirements for the same technology in different jurisdictions for meeting a California requirement focused on the amount of hazardous waste generated. Accordingly, this would exacerbate historic waste colonialism by encouraging the siting of polluting technologies in the parts of the U.S. and the world with the fewest environmental protections.

Insufficient Evaluatory Metrics/Criteria

A) Conflation of Risk and Amount

The definition of "significant amounts of hazardous waste" in Section 18980.4.1(d)(1) and Section 18980.4.1 (d) (B) is problematic. SB54 language refers to the amount of

hazardous waste, not the “risk” associated with it, and these are clearly different standards. The proposed regulatory framework in this regard is also clearly and critically at odds with the SB 54 statute.

As mentioned in the letter submitted to the Governor on behalf of a myriad of legislators, this unlawfully shifts the standard from the production of hazardous waste (as required by the statute) to its management, which directly conflicts with the legislative intent to exclude technologies based on the generation, not governance, of hazardous waste.

B) Weakness in Defining ‘Hazardous Waste’ - Federal vs. State

The regulations reference the federal definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. Use of the weaker federal definition problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered ‘California Hazardous.’ This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.

Section 25117 of the California Health and Safety Code clearly states that “hazardous waste” means “a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141.”

The legislature has repeatedly stated, and the courts have upheld, that “it is in the interest of the health and safety of all Californians...to establish a regulatory program that is more stringent than federal law” (Health & Safety Code 25100) when it comes to hazardous waste. In the absence of other statutory direction, the Department must default to California statutory and regulatory definitions when implementing state laws, like SB 54.

C) Divergence from Department Precedent on Definition of ‘Hazardous Waste’

CalRecycle’s proposal to rely on the federal RCRA definition of “regulated hazardous waste” (40 CFR part 261) for SB 54 implementation is inconsistent with how CalRecycle and its partner boards define and use “hazardous waste” elsewhere in Title 14 and Title 27 of the California Code of Regulations, where the agency repeatedly anchors to DTSC’s California definition in Health & Safety Code § 25117 and Title 22, Division 4.5. For example, Title 27’s joint CalRecycle/SWRCB technical definitions make “hazardous waste” expressly coextensive with Title 22 (“any waste which, under … Title 22 … is required to be managed according to Division 4.5 of Title 22”), and ties “hazardous constituent” to Title 22 Chapter 11/Appendix VIII, not federal RCRA alone.

In Title 14, CalRecycle’s Household Hazardous Waste definitions incorporate HSC § 25117 by reference for “Hazardous Waste,” and multiple construction & demolition/inert debris provisions exclude materials that are “hazardous waste as defined in Title 22, §

66261.3 et seq.," again deferring to California's state definition rather than importing federal RCRA scope.

Using the federal definition in SB 54—where the rest of CalRecycle's solid-waste framework consistently points to California's existing definitions—creates an unnecessary and incongruent departure from agency precedent and risks narrowing California's protective coverage for hazardous characteristics that are broader under state law.

For instance, some illustrative examples where CalRecycle regulations rely on existing California definitions for Hazardous Waste rather than RCRA definitions:

• 27 CCR § 20164 (Technical Definitions): "Hazardous waste" means any waste required to be managed under Title 22, Div. 4.5; "hazardous constituent" cross-references Title 22, Ch. 11/App. VIII; "regulated hazardous waste" points to § 66260.10 (Title 22).
• 14 CCR § 18502 (HHW Definitions): "Hazardous Waste (HW)" incorporates HSC § 25117 (DTSC's statutory definition) within CalRecycle's HHW program definitions.
• 14 CCR § 17225.32 (Minimum Standards—Definitions): "Hazardous Wastes" expressly tethered to HSC § 25117 and related California definitions.
• 14 CCR §§ 17381, 17388 (C&D/Inert Debris): "Inert debris" may **not contain hazardous waste as defined in Title 22, § 66261.3 et seq.—an explicit reliance on DTSC's regulatory definition.

Because CalRecycle's own rules overwhelmingly anchor "hazardous waste" to the state's existing Title 22/HSC § 25117 framework, importing the federal definition for SB 54 is incongruent with CalRecycle's established regulatory practice.

D) Reference to Inappropriate ISO Standards

ISO 59014:2024 does not define 'recycling,' nor does it establish criteria relevant to environmental safety, GHG emissions, or human health. Its focus on material tracking and internal process management is wholly insufficient to serve as a proxy for SB 54's environmental justice and pollution minimization mandates. Referencing ISO 59014 misleads stakeholders into believing it aligns with California's goals when it demonstrably does not.

Staff comments during the workshop indicate that this ISO standard is intended to be a proxy for the requirement that "the department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts." ISO 59014:2024 does not address (or even reference) the majority of these criteria.

Furthermore, the aforementioned ISO standard does not even define recycling at all, let alone in line with the statutory definition of recycling, nor does it include a single environmental or efficiency benchmark to distinguish legitimate recycling operations

from fraudulent, toxic, and climate-harming operations. Instead, the ISO proposes soft, optional, qualitative guidelines for material recovery operators to standardize their operations from a labor and circular economy aspect (e.g., recommendations on types of data to collect, and on types of policies to include) and is a purely non-binding standard.

In fact, unlike California law, this ISO standard does not consider energy recovery a form of disposal and promotes the use of a very narrow Life Cycle Analysis, which ignores issues around toxics and human health concerns and environmental pollution.

Infrequently Reported Facility Level Information

The proposed regulations still allow PROs and Independent Producers to approve non-mechanical recycling technologies, including so-called “chemical recycling,” with CalRecycle review. Facilities must now submit information on throughput and hazardous waste generation (§ 18980.4.1(d)(4)), but this requirement is tied only to initial reporting. A facility could easily demonstrate minimal hazardous waste at pilot scale, secure approval, and then expand operations or shift feedstocks to produce significant hazardous waste without triggering a new review. The definition of “significant amounts of hazardous waste” is narrowed to weaker federal standards, and the prior requirement to evaluate risks against mechanical recycling baselines has been removed.

This structure undermines both transparency and accountability, while violating the legislative intent of SB 54. Although records submitted to CalRecycle are nominally subject to the Public Records Act, large portions can be withheld as trade secrets, leaving the public in the dark on hazardous waste, costs, and climate impacts. To prevent abuse, the regulations must explicitly require facilities to re-enter the approval process when scaling up, changing or adding technologies, or processing new covered materials. They must also restore comparative evaluation against mechanical recycling and ensure that hazardous waste and whole-lifecycle climate impact data, including the significant climate footprint from the production and management of solvents used in recycling operations, are publicly accessible. Without these safeguards, the rules risk enabling unproven or polluting “chemical recycling” projects under the guise of compliance, in direct conflict with the intent of SB 54.

Language Should Reflect Unequivocal Prohibition on Chemical Recycling

Leaving the approval of recycling technologies solely to the discretion of the Producer Responsibility Organization (PRO)—as currently permitted under the draft regulations—undermines the objectivity, transparency, and environmental rigor required by SB 54. The PRO, by design, is a producer-led entity with a fiduciary and operational interest in minimizing compliance costs for its members. Granting the PRO unilateral authority to determine which technologies qualify as "recycling" creates an inherent conflict of interest that threatens to weaken the law’s core requirements.

Under Public Resources Code § 42051.1, CalRecycle is directed to ensure that packaging is recyclable in practice and at scale. That determination must be grounded in science, operational evidence, and public accountability—not left to an industry-governed body with incentives to greenlight technologies that may have questionable environmental outcomes, such as pyrolysis, gasification, solvolysis, solvent-based technologies, and similar technologies , so long as they are good for their members' bottom line To safeguard SB 54's credibility and intent, all recycling technology approvals must be subject to final CalRecycle review, with decisions made during publicly noticed monthly meetings, after:

• Meaningful public comment;
• Technical vetting by independent experts; and
• Clear findings regarding environmental safety, yield efficiency, and alignment with California's waste hierarchy.

This public, science-based process built into the statute ensures that "recycling" maintains its integrity, avoids regulatory capture, and reflects the law's intent to advance genuine circularity, not just a green-washed chemical conversion or incineration masquerading as recycling. The baseline for a process like this should be overseen by the regulatory agency, not by the companies and industry via the PRO.

Furthermore, CalRecycle must defer to the legislative history reflected in both Senate and Assembly analyses and Senator Allen's unambiguous statement when answering future queries on whether waste-to-energy and related technologies constitute recycling under SB 54.

End Market 'Viability' is Ignored

While the regulations refer to a "viable responsible end market" as a responsible end market that is feasible and capable of being economically successful, there are no clear criteria for "viability" – especially given the viability requirement is only mentioned one time in the entire draft regulatory text. The regulations must be amended to require a company proposing a new recycling end market to demonstrate a track record of viability at scale.

Manufacturers have pledged recyclability for the packaging for decades, often without anything to show for it. Recovering a material that has never been effectively recycled is not "viable," and this needs to be explicitly addressed in the regulations to avoid intentional delay by packaging manufacturers that want to see material as long as possible, even when they know they will never hit the ultimate targets in the law.

The statute sets a clear baseline that should eliminate problematic material types prima facie if the market for recycling those materials is not sustainable or solvent. To this end, CalRecycle must provide further clarity on what a viable, responsible endmarket looks like relative to a non-viable one, as well as publish guidance about how the PRO should enhance or expand access to new viable endmarkets.

Absent a functional definition of 'viable responsible endmarket' in statute or the regulations, it will be impossible for the Department or the PRO to ensure that covered material recycling is occurring in a way that prioritizes sustained investment into industries with a proven track record of success.

We would urge the Department to also include a requirement for the end market technology to have successfully demonstrated a meaningful recovery rate in a comparable producer responsibility program. As such, viability and financial solvency are of utmost importance in ensuring that Responsible End Markets remain a core fixture of the PRO's planning efforts. Additionally, it should be noted that a system where each material producer is responsible for the cost of recycling that material is crucial to prevent "punishing" highly recyclable material producers by using their money paid to the PRO to cover the cost of recycling less recyclable covered materials. Building this stipulation into the PRO funding structure is essential to ensure the equitable treatment of producers. Similarly, eco-modulation should be differentially calculated based on material type and impact, and fees collected should similarly be directed to mitigate the impacts of each.

Responsible End Market Criteria (§18980.4.): Threshold for non-degraded fraction of compost is an impossible standard, must be reduced or eliminated
Full biological decomposition is an impossibility

The regulations require that "must fully biologically decompose." While the intent here is laudable, it is unlikely that even naturally occurring organic materials would meet a requirement for 100% degradation, especially within the same timeframe as other biologically degrading materials of diverse organic chemistry. With current technologies, setting the threshold at 100% makes this a nearly impossible standard to meet, and will result in the effective prohibition of 'compostability' as a compliance pathway under SB 54. We suggest using compliance with the applicable evolving and most up-to-date ASTM Standards as a proxy for ensuring the inherent degradability of covered materials. Specifically, making use of ASTM D6400 and D6868 would allow for congruency with other state and federal definitions of compostability.

End Market Identification (§18980.4.1): Producer Data should be required to be submitted to CalRecycle in addition to the PRO
Submission of Producer Data to the Department should be Compulsory

The regulations propose that producers be required to produce compliance records to the Department "upon written request". This is insufficient for proper regulatory oversight by the Department, the Advisory Committee, and members of the Public. It must be a requirement that these records are annually submitted to CalRecycle, without exception. Any data that is exempt from disclosure requirements should be provided to the public and the advisory committee in aggregated form, if applicable, with trade secrets redacted. However, it is not enough for the Department to only reactively

request this data – instead, it should adopt a proactive approach of requiring this data annually and reviewing these submissions as frequently as needed.

Article VI: Requirements for the Producer Responsibility Organization

Eco-modulated Fee and Fee Schedule (§18980.6.7) Regulations Must Provide Greater Detail on How Malus Fees Should be Assigned to Covered Products Containing Toxic Chemicals

SB 54 requires fees for PRO participants and directs that the fees be adjusted with malus fees or credits, based on various delineated factors. CalRecycle's proposed regulations provide detail on several of these factors, with CalRecycle explaining that "[b]y presenting a list of items, further detailed below, this subsection clearly lays out requirements related to the fee, so that a PRO and participating producers can readily understand how the PRO must assess it." Similar detail is required for the factors specifying malus fees and credits related to the presence of toxic heavy metals or additives in plastic that can make recycling harder or embed toxics in the recycled plastics—these factors are not addressed in the regulations. CalRecycle should include provisions in the regulations that give greater specificity to what pathogens, heavy metals, or additives should result in credit or malus fee adjustments.

In closing, we urge the Department to seriously refine Section 18980.2 so that "categorical exclusions" function as narrowly tailored, temporally limited exemptions—not automatic off-ramps from SB 54 compliance. As drafted, the notice-based structure, prolonged default suspension of covered status, and allowance for serial resubmissions invite delay and gamesmanship, and risk expanding the universe of exempt packaging beyond what the statute permits. CalRecycle should shift to an authorization framework in which materials remain covered unless and until the Department makes an affirmative legal determination grounded in mandatory federal preemption, paired with a clear sunset and meaningful guardrails that prevent perpetual loopholes.

While we appreciate the Department's efforts in these most recent changes, the January 2026 amendments do not resolve the core deficiencies raised repeatedly in public comments and letters. The Department must still address responsible end markets; ensure the regulations unequivocally exclude polluting "chemical recycling" and other harmful technologies; strengthen transparency, audit rigor, and data reporting; and close definitional loopholes that invite de minimis abuse and contamination of recycling and composting streams. We appreciate continued engagement and stand ready to work with CalRecycle to ensure the final regulations faithfully implement SB 54, remain within statutory authority, and deliver real, enforceable reductions in plastic pollution and its disproportionate harms.

Thank you for your consideration.

Best,

Tony Hackett
Californians Against Waste
Cc: Mindy McIntyre, Chief Deputy Director
Karen Kayfetz, Product Stewardship Branch Chie

Response to O-25-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-26: Consumer Brands Association (Erin Raden)

Comment O-26-1

February 13, 2026

Ms. Zoe Heller
Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Submitted via the Public Comment Form:
https://calrecycle.commentinput.com/?id=VfBKce95R

Re: Consumer Brands Association Comments on Proposed Revisions to California Senate Bill 54 Permanent Regulations

Dear Ms. Heller,

Consumer Brands Association ("Consumer Brands") is appreciative of the opportunity to submit comments regarding California's Department of Resources Recycling and Recovery's ("CalRecycle's") proposed revisions to the regulations to implement the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). We are committed to supporting the goals of SB 54 and welcome CalRecycle's continued stakeholder engagement throughout this rulemaking process.

We are encouraged by CalRecycle's stakeholder involvement in the SB 54 rulemaking process, providing ample opportunities for stakeholders across the packaging value chain to provide expert insights into the essential mechanisms ensuring a successful implementation of California's program. Although we still have many outstanding concerns, it is clear CalRecycle took to heart Governor Gavin Newsom's directive that implementation effectively protect the environment in a fair and equitable manner.

The Consumer Brands Association ("Consumer Brands") champions the industry that makes the products consumers choose and the brands they trust. From household and

personal care to food and beverage products, the consumer packaged goods (CPG) industry plays a vital role in powering the U.S. economy, contributing $2.5 trillion to U.S. GDP and supporting 22.3 million American jobs. The CPG industry's number one priority is delivering safe, affordable, and convenient products to consumers every day. But the industry also plays a crucial role in reducing packaging waste and increasing recycling in the U.S. According to recent data, industry-led source reduction efforts have decreased U.S. packaging volume by about five million metric tons between 2019 and 2024. Consumer Brands is also leading a broad-based coalition, the Recycling Leadership Council, committed to modernizing recycling standards and reducing plastic waste. Driven by innovation and collaboration, CPG companies are full-speed ahead on working towards a zero-waste, circular economy.

While Consumer Brands is grateful for the previous changes to the proposed SB 54 regulations, which represent significant improvements over the original draft, the newly proposed revisions, specifically those in section 18980.2. (Categorically Excluded Materials), present significant obstacles to producer compliance with SB 54 requirements, ultimately impeding a successful rollout of California's program. We believe the following are opportunities to tighten up and improve the proposed revisions:

1. Disregarding Voluntary USDA and FDA Guidelines Unintentionally Impedes Food Safety Best Practices

Issue:

Packaging for food and agricultural commodities requires unique specifications to ensure food and human safety, as well as product quality/durability; meeting these specifications is paramount in driving producers' packaging decisions. Federal food safety packaging statutes, regulations, and FDA and USDA guidance constitute the current, widely accepted, and relied-upon compliance pathway for the food and agricultural industries to ensure their packaging meets the required specifications.

Consumer Brands has significant concerns with the addition of the word "mandatory" in paragraph (2) of subdivision (a) of Section 18980.2. in the proposed revisions to SB 54 regulations. The FDA and USDA publish voluntary packaging guidance that serves as the industry's gold standard for food safety considerations. Mandatory USDA and FDA packaging requirements for food and agricultural commodities should serve as the baseline for ensuring food safety; many producers go above and beyond these mandatory requirements to protect consumers and provide the freshest products possible. Only considering exclusions for packaging that conflicts with mandatory FDA or USDA regulations, rules, or guidance will inadvertently harm current food safety best practices, which many producers voluntarily adhere to, to provide consumers with the finest and safest product possible. Further, given that FDA and USDA guidelines are typically rooted in the Federal laws these agencies enforce, it may be difficult to discern exactly what is strictly mandatory and what is voluntary.

Finally, requiring CalRecycle to only consider mandatory regulations, rules, or guidelines, in justifying the approval of an exclusion, expressly conflicts with Public

Resources Code (PRC) Section 42060(b)(1), which requires CalRecycle to "consider guidelines" issued by the FDA or USDA.

Recommended Solution:
To ensure packaging adheres to the highest standards of food safety, Consumer Brands recommends removing the three references to "mandatory" regulations, rules, or guidelines. Producers should not have to compromise the safety of their products to comply with SB 54 regulations.

Response to O-26-1

Comment rejected. Regarding addition of the term "mandatory," CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. Regarding the assertion that the regulations require producers to "go above and beyond . . . mandatory requirements to protect consumers and provide the freshest products possible," CalRecycle rejects the comment for the reasons provided in response to comments O-49-6 and B-56-2. Even if the commenter were correct that section 18980.2(a)(2) might have that effect, exemptions pursuant to section 18980.2.4 for "unique challenges" and health or safety risks effectively mitigates it. Regarding the difficulty in "discern[ing] exactly what is strictly mandatory and what is voluntary," the commenter's own explanation resolves that difficulty: because "guidelines" are based on federal laws enforced by the agency, those laws present the effective requirements with which packaging must comply and resolve ambiguity concerning whether an element of a "guideline" is "voluntary." Regarding Public Resources Code section 42060(b)(1), the proposed regulation does not conflict with it. The requirement to "consider guidelines" inherently recognizes CalRecycle's discretion over how to do so.

Comment O-26-2

2. Unworkable Criteria for Justifying Exclusion
Issue:
Producers in the CPG industry are constantly evaluating their packaging. Verifying their packaging represents the "best in class" in terms of product safety and environmental impacts compared to alternative packaging materials and designs, while adhering to state and federal regulations, rules, and guidance. The criteria that producers of USDA and FDA-regulated products must meet to justify an exclusion from the requirements of SB 54 appear to be unworkable and do not reflect real-world food safety, operational and supply-chain constraints.

The three-pronged exclusion criteria, outlined in items (i) - (iii) of subparagraph (B) of paragraph (2) of subsection (a) of Section 18980.2. of the proposed revisions to SB 54 regulations, require producers to prove to CalRecycle that, first, no alternative packaging meets mandatory safety standards, second, the producer can't eliminate or replace the problematic component(s) of their packaging to comply with mandatory

safety standards, and, third, the producer can't completely redesign or replace their packaging to comply with mandatory safety standards.

In many instances, there will be no viable alternative packaging that complies with USDA and FDA mandatory safety standards and can feasibly meet the requirements of SB 54. Yet, even in these instances, producers will still be required to further demonstrate that there is no feasible mechanism, whether through redesign, replacement, or elimination, by which their packaging can comply with safety standards and SB 54. In instances where alternative materials are available, they often do not provide the same functionality as the original packaging, potentially leading to diminished food safety, shortened shelf life, and increased food waste. Producers make purposeful packaging material decisions to provide their products with the longest possible shelf life, using materials that control respiration and moisture to reduce spoilage. Requiring producers to utilize alternative packaging materials will undoubtedly result in a reduction of a product's shelf life, which inherently increases the likelihood of food waste, which has massive environmental and greenhouse gas emissions implications.

Recommended Solution:
Revert to the previously proposed language in subparagraph (A) of paragraph (2) of subsection (a) of Section 18980.2., which excludes the highly restrictive three-pronged exclusion criteria.

Response to O-26-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1.

Comment O-26-3

3. Exclusion Process is Overly Onerous and Financially Punitive
Issue:
In its entirety, the proposed categorical exclusion process for USDA or FDA-regulated products, outlined in Section 18980.2. of the regulations, is unduly onerous for producers and, ultimately, for CalRecycle. The revisions expanding the criteria required to justify an exclusion from the requirements of SB 54 will ultimately necessitate producers to prove to CalRecycle, in a written report, that they have tried every possible solution to comply with mandatory federal regulations, rules, and guidelines while maintaining a feasible pathway for compliance with SB 54 requirements. Even if a producer justifies meeting all necessary exclusion criteria, CalRecycle can override the producer's justification for something as minor as failing to address a single possible alternative packaging material.

Not only does the revised proposal for the categorical exclusion process increase the burden on producers, but it also drastically increases CalRecycle's administrative oversight, which producers fund through their annual dues. Under this revised proposal, producers who are rightfully seeking an exclusion for their USDA or FDA-regulated

packaged products are inadvertently increasing program costs, thereby leading to higher producer dues.

Recommended Solution:
To avoid making an already expensive program even more expensive and to ensure an exclusion process that is practically achievable in its application and purpose, Consumer Brands recommends reverting to the previously proposed language in Section 18980.2., which outlined a stringent yet feasible exclusion process for USDA and FDA-regulated packaged products.

Thank you for the opportunity to comment on the proposed revisions to the permanent regulations for SB 54. Please do not hesitate to contact me if you have any questions regarding this request. I can be reached at eraden@consumerbrandsassociation.org.

Sincerely,

Erin Raden
Senior Director of State Affairs
Consumer Brands Association

Response to O-26-3

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. Also, the commenter mischaracterizes the effect of an incompleteness determination pursuant to section 18980.2(a)(2)(C). When CalRecycle identifies packaging that would resolve the legal conflict cited, that does not amount to CalRecycle "overrid[ing] the producer's justification." Rather, it is a request for the producer to supplement the justification to show how the packaging identified by CalRecycle is not alternative packaging that can be used to resolve the cited conflict. The suggestion that CalRecycle should not have the discretion to require such clarification is unreasonable on its face. Regarding CalRecycle's administrative cost, the commenter's concern does not justify any revision to section 18980.2(a)(2), which minimizes CalRecycle's costs by implementing a procedure less burdensome than the application and approval process for exemptions under section 18980.2.4. Moreover, the revisions in the 15-Day Changes introduced minimal procedural changes, so the commenter's proposal—reversion to the 45-Day Changes—would not meaningfully address this concern.

O-27: Consumer Brands Association and Sustainable Food Policy Alliance (Erin Raden)

Comment O-27-1

February 13, 2026
Ms. Zoe Heller

Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

Re: Comments on Proposed Revisions to SB 54 Regulations from Consumer Brands Association and the Sustainable Food Policy Alliance

Dear Director Heller,

Thank you for the opportunity to comment on the proposed revisions to the regulations implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). The Consumer Brands Association and the Sustainable Food Policy Alliance represent a broad range of food and consumer product manufacturers that are committed to the law's success and to working constructively with CalRecycle to ensure it is implemented in a practical and effective manner.

We are writing to express concern with the recently proposed revisions to the conditional exclusion for food and agricultural packaging subject to federal food safety requirements. At a high level, these changes take an exclusion that was intended to be workable and supportive of compliance and make it exceedingly difficult to use in practice.
The original exclusion recognized an important reality: food packaging decisions are often driven by safety, shelf life, and product integrity requirements governed by FDA and USDA oversight. The exclusion was meant to ensure that SB 54's environmental goals could be pursued without conflicting with food safety obligations or forcing producers into untenable design choices.

The revised framework moves in the opposite direction. By sharply narrowing eligibility and layering on an extensive demonstration burden, the exclusion no longer functions as a meaningful compliance pathway. In effect, producers are now asked to prove that no conceivable alternative exists, even where packaging choices are driven by legitimate and well-established food safety considerations. This standard is not realistic and was not what stakeholders understood the exclusion was designed to accomplish.

As revised, the exclusion creates uncertainty rather than clarity. It introduces a level of subjectivity and second-guessing that makes it difficult for producers to plan, invest, and comply in good faith. More broadly, it risks undermining confidence in the regulatory framework by converting a safety valve into a barrier.

Recommended Changes
We respectfully encourage CalRecycle to step back and reconsider this approach. Specifically, we recommend the following changes to restore the exclusion to a workable standard:
1. Remove the word "mandatory" each place it appears in Section 18980.2(a)(2) on pages 20 and 21 of the draft regulations. Voluntary FDA and USDA guidance

represents industry best practices for food safety, and producers should not be penalized for adhering to these standards.
2. Add the words "without the entity facing substantial or undue hardship" at the end of subsection (B)(iii) on page 21. This would acknowledge that while alternative packaging configurations may theoretically exist, they may not be feasible given real-world operational, supply chain, and cost constraints.

We share CalRecycle's commitment to reducing waste and advancing a circular economy in California. We believe those goals are best served by regulations that are clear, predictable, and achievable, and we urge CalRecycle to revisit the revised exclusion with that principle in mind.

Thank you for your continued engagement, and we look forward to continued dialogue.

Sincerely,

Consumer Brands Association
Sustainable Food Policy Alliance

Response to O-27-1

Comment rejected. CalRecycle rejects this comment for the reasons set forth in response to comment B-3-1, which raises the same concerns and makes substantially the same recommendations as does this comment. Regarding the assertion that section 18980.2(a)(2) "introduces a level of subjectivity," CalRecycle specifically rejects that assertion because the revisions accomplish the opposite by establishing fact-based, objective criteria in subparagraph (B). CalRecycle also specifically rejects the assertion that the proposed regulation amounts to "second-guessing" packaging decisions; see CalRecycle's response to comment O-49-6. Regarding the phrase "without the entity facing substantial or undue hardship," CalRecycle rejects that suggestion for the reasons stated in response to comment O-49-3.

O-28: California Retailers Association (Sarah Pollo Moo)

Comment O-28-1

February 13, 2026

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 Retailers Association (CRA) appreciates the opportunity to provide comments on CalRecycle's updates to the proposed regulatory text in the formal rulemaking period ,and as part of the latest 15-day comment period that was initiated due to these updates, for California's SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act.

CRA is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, on-line marketplaces, restaurants, convenience stores, supermarkets and grocery stores, chain drug and specialty retail such as auto, vision, jewelry, hardware and home stores. The California Retailers Association works on behalf of California's retail industry, a driving force of California's economy, with over 400,000 retail establishments, an annual gross domestic product of $330 billion and one fourth of California's total employment.

The retail industry is committed to the goals of SB 54, has made investments in sustainable practices and appreciates the opportunity to continue to participate in the rulemaking process for SB 54. The California Retailers Association's President and CEO Rachel Michelin is an appointee to the SB 54 Advisory Board and serves as an ex-officio member of the Circular Action Alliance (CAA) Producer Responsibility Organization (PRO) California board furthering the retail industry's commitment to moving towards a circular economy. As such, retailers are deeply invested in ensuring this groundbreaking extended producer responsibility (EPR) program for creating a more circular economy for plastics and packaging is successful both for producers, local governments and, most importantly, consumers.

Below, CRA summarizes our latest comments on the changes made to Article 2: Covered Material and Covered Material Categories, Section 18980.2, Categorically Excluded Materials pertaining to the exclusion for packaging or packaging components that must comply with federal food safety regulations (Food and Ag exclusion section of the draft regulations) as well as comments to changes made to the regulations that are technical in nature.

CRA appreciates the work CalRecycle has done on the regulations to date. We look forward to ongoing dialogue and we are happy to make our subject matter experts available to answer specific questions or provide additional information that may be useful as we get closer to SB 54 regulations being final.

Response to O-28-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-28-2

Exclusion Process

Despite updates to the draft regulatory text, there continues to be a significant lack of clarity on the process for food safety exclusions. The three criteria laid out in the rules for the food and agriculture exemption have several problems. One such problem is that there is no feasibility standard mentioned. Another is that there is no clear meaning of the phrase "all legal conflicts". In addition, the public posting of exclusion applications opens the process up to public review and challenge. CRA anticipates the potential for drawn out litigation over the criteria making it hard to determine if and/or what items producers should even attempt to obtain exclusion for.

When discussing the ability to switch packaging to other materials, supply availability of that alternate material needs to be a factor. If one producer is able to create a solution for their item, and another business sells a similar item, that means there can be no exclusion because alternate packaging exists, but that alternative is not available or at least widely and readily available to anybody but the one producer who created it. This means one business may be held hostage by the packaging innovation of another.

We know that SB 54 contains provisions around protecting confidential business information, but we think there should be more detail as to how this will be addressed in the exclusion process, when applications are posted publicly. The level of detail that may need to be provided to obtain an exclusion raises confidentiality concerns and CRA requests more direct language addressing this point in the rule.

Additionally, Cal Recycle, should only identify approved exemption notices on the public database rather than publicly sharing all exemption notices. And this should be done without revealing confidential business information.

Response to O-28-2

Comment rejected. Regarding a "feasibility standard," no change is required because the objective criteria are sufficiently clear and do not require addressing merely theoretical alternatives, as explained in greater detail in response to comment B-3-1. Regarding the phrase "all legal conflicts," that phrase is clear in the context of 18980.2(a)(2)(B)(iii). The only reading of "not possible to avoid all legal conflicts" is that it refers to there being no way to avoid violating a law. Regarding the potential that supply obstacles might prevent transitioning to known, otherwise satisfactory packaging, the commenter's proposal is illogical and would effectively nullify the Act for certain competitors based on ordinary

marketplace realities. In that scenario, certain packaging complies with the Act and would be "covered material," with no justification for it to be excluded due to conflicts with federal requirements, and producers would incur the obligation to participate in a PRO plan. If other packaging for the same goods were not considered covered material, the compliant producers would effectively be punished for complying with the Act, and others would be rewarded for not overcoming, and have no incentive to overcome, the supply-related challenges preventing them from doing so. Instead of justifying a revision to section 18980.2(a)(2), the posited scenario is a prime example of when "unique challenges" might justify an exemption for the non-compliant packaging, as addressed in section 18980.2.4.

Regarding "public posting of exclusion applications," no change is required because the notices submitted pursuant to section 18980.2(a)(2) will not be publicly posted. Only the basic, non-confidential details listed in subparagraph (D) must be posted. Relatedly, the potential for "public review and challenge" is not a valid justification for the notices themselves not to be considered public records. The notion that the basis for entities' claims that they are not subject to the Act should be considered exempt from public disclosure is unreasonable on its face, and Article 14 of the proposed regulations provide ample protection for withholding records to the extent they contain trade secrets.

Lastly, the commenter offers no explanation for its assertion that the public database should "only identify approved exemption notices." That would be an unreasonable restriction because, when a notice is deemed no longer valid, that determination provides crucial notice to regulated entities concerning the bases that they might assert in support of the exclusion.

Comment O-28-3

Updated Regulations Will Remove Products From Shelves Taking Away Consumer Choice and Affordability in California

While the California Retailers Association appreciates CalRecycle's willingness to consider an exemption for food packaging regulated by the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA), the current draft regulatory text is too restrictive to allow meaningful relief and may result in products being taken out of the consumer market for lack of scalable compliant packaging, taking away California consumer choice and affordability.

Retailers manufacture several products that are strictly regulated by the FDA and/or USDA in a way that makes complying with the California EPR program requirements extremely difficult or virtually impossible.

The following includes specific examples where the updated regulations are problematic in this area.

• 19p of the FDA Pasteurized Milk Ordinance (PMO) requires tamper evident seals such as barrier films or caps for grade A dairy products. Examples include Plastic Caps for fluid milk products and foil or plastic film for yogurt and cottage cheese containers.
•
The PMO requires packaging material used for Grade A milk products to be approved and listed, and to come from Interstate Milk Shippers (IMS) approved manufacturers. These requirements are referenced in Appendix J of the PMO.

• Appendix J of the PMO also requires that all paper, plastics, foil, adhesives, and other components of containers used in the packaging of milk and/or milk products that have been condensed and/or dried shall be free from deleterious substances and comply with the requirements of the FFD and California.

• Retorted products (Acid and Low Acid Canned Foods): Materials must provide hermetic seal to prevent spoilage/and or foodborne illness (C. Botulinum).

• Material Approval: Only packaging materials that have passed USDA review for safety, non- toxicity, and suitability may be used for federally inspected products.

• Packaging that displays required regulatory information (e.g., ingredients, nutritional information, net weights, cooking or handling instructions, claims, etc.)

<u>Other Food Safety/Quality Considerations</u>

• Barrier films to manage oxygen permeability (yogurts, deli meats).

• Low-Density Polyethylene (LDPE) Packaging for bread and other baked products that maintain structural integrity, quality, and safety.

• Barrier films to ensure protection of products from being destroyed or adulterated (e.g., potato chips, cereal bags).

• Metalized Films for functional strength and barrier properties (e.g., yogurt).

• Managing natural molds in dairy cheese through vacuum packaging and plastic films (e.g., cheese).

• Safety handling of raw proteins (etc., raw poultry, bacon, etc.), avoiding contamination of the consumer, the store and containers used in transportation.

• Packaging must have moisture barrier properties to ensure that external condensation (in transportation or at point of sale) is not contaminated from environmental contamination. Paper board – frozen and dairy cartons – milk.

• Safe handling and storage of cooked meats (e.g., deli meats; beef jerky; pepperoni, etc.).

• Rights of consumers to see certain products to purchase (bagged produce and other items needed to maintain product safety) – barrier properties included.

Specific Language Revision

Minor adjustments to the updated draft regulatory language will provide a better balance between incentivizing innovation of sustainable packaging while allowing producers to continue serving California consumers in a safe manner:

Section 18980.2(a)(2)(B)(i) should be revised as follows:

*"There is no such **market available and scalable** alternative that satisfies all applicable mandatory standards for safety and structural integrity of packaging, creates no new unavoidable legal conflict with any law, and otherwise is lawful to use in California"*

Response to O-28-3

Comment rejected. The commenter ignores that other provisions of the proposed regulations allow the "meaningful relief" alleged to be missing from section 18980.2(a)(2). If a certain product cannot be supplied in California because compliant packaging for it is not "scalable," that packaging may not be an actual "alternative" (and thus would not defeat the exclusion allowed under section 18980.2(a)(2)), and even if it were an alternative, the practical challenges it presents would be available as the justification for using other packaging pursuant to the "unique challenges" exemption under section 18980.2.4. Therefore, the proposed change to 18980.2(a)(2)(B)(i) to address the commenter's concern would be inappropriate. See, also, CalRecycle's response to comment O-28-2, which raises concern over marketplace availability. That concern is substantively similar to the "scalability" one raised in this comment and directly relevant to this comment's proposed addition of "market available," so the CalRecycle's response applies to this comment as well.

Comment O-28-4

Third Party Support Needed

Page 21 - Article 2(a)(2): California must allow third parties to support retailers whose vendors will need to guide retailers in this section of the regulations for SB 54. Retail brand owners should not be making exemption justifications on behalf of producer products. CalRecycle needs to provide more efficiency here to positively recognize different food regulations that preempt state packaging goals.

Page 23 – (D): This section of the regulations needs to be broad enough that it covers all like-formats with similar design features.

Page 24 – (F): If substantially similar packaging is considered similarly not covered material, CalReycle needs to allow industry-level applications of carve-outs. If packaging for certain, clearly identifiable types of products is categorically excluded by 18980.2.(a)(2), each producer should not be required to individually submit for exclusions.

Page 35 – (b): Exemptions or carve outs should not be tied to a specific producer. There should be an opportunity for industry to collaborate so the review and approval process is more streamlined for both CalRecycle and industry.

We, again, appreciate the opportunity to share our comments and remain ready to work with CalRecycle to implement SB 54 and lead the nation and world, as this monumental policy decreases plastic waste and moves California closer towards a circular economy and sustainable waste management system.

If you have any questions or need additional information on any of the issues raised in this letter, please do not hesitate to contact me directly either at 916/443-1975 or Sarah@calretailers.com

Sincerely,

Sarah Pollo Moo
Director, Public Affairs
California Retailers Association

Attachments: Previous Correspondence Sent to CalRecycle for This Rulemaking

Response to O-28-4

Comment rejected. No change in paragraph (2) of section 18980.2(a) is needed to address the commenters concern because nothing in it prohibits "third parties [from] support[ing] retailers whose vendors will need to guide retailers in this section of the regulations for SB 54." Regarding subparagraph (D), the commenter's proposal is vague; it is unclear what it would mean for that subparagraph to "cover[] all like-formats with similar design features." If the commenter intended to suggest that database entries should describe the packaging identified in notices broadly enough to encompass all packaging that would qualify for the exclusion on the same grounds, CalRecycle rejects that suggestion. The entities submitting notices are best suited to describe all relevant packaging, and subparagraph (B) places the burden on them to do so. Regarding subparagraph (F), CalRecycle declines to make the suggested change because the change would eliminate notice to CalRecycle and the public of the range of packaging claimed not to be subject to the Act. Moreover, the database required under subparagraph (D) will be publicly accessible, and once there are "clearly identifiable types of products" identified in the database as excluded under 18980.2(a)(2), the burden of submitting notices describing the

same packaging will be minimal. Also, nothing in the proposed regulations precludes CalRecycle from highlighting examples of such packaging, further easing the burden of preparing and submitting notices.
No response is required to the commenter's final suggestion, identified only as concerning "Page 35 – (b)." There is no subdivision (b) found on that page of the published regulations, and the substance of the comment suggests that it was not intended to concern any portion of the 15-Day Changes that contains revisions. If "(b)" was intended to be "(g)," which does appear on page 35, no response would be required because the proposal does not concern the revisions made within section 18980.2.2(g). Those revisions concern the method of submission of documents related to exemption renewal.

O-29: Ag Container Recycling Council (Mark Hudson)

Comment O-29-1
February 13, 2026

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

From: Ag Container Recycling Council (ACRC)

Contact Information:
Mark Hudson, Executive Director
Ag Container Recycling Council
PO Box 1928
Apex, NC 27502
Email: mhudson@agrecycling.org
Office: 877-952-2272

Subject: SB 54 Revised Proposed Regulations – Comment Regarding Statutory Exclusions (PRC §42041(e)(2))

To Whom It May Concern:

The Ag Container Recycling Council (ACRC) appreciates the opportunity to comment on the January 2026 revised proposed regulations implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).

ACRC notes that the revised regulatory text does not materially alter the statutory exclusions incorporated from PRC §42041(e)(2), including exclusions for packaging used to contain products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals; products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.); and packaging used to contain hazardous or flammable products classified under the 2012 OSHA Hazard Communication Standard.

ACRC respectfully requests that CalRecycle confirm that packaging meeting the statutory criteria set forth in PRC §42041(e)(2) are not considered "covered material" for purposes of reporting and fee assessment under SB 54. ACRC further requests that CalRecycle confirm that documentation expectations for demonstrating qualification under these exclusions are limited to what is necessary to substantiate the statutory basis for exclusion — specifically: (1) for the FIFRA exclusion, evidence of FIFRA registration for the product contained in the packaging (e.g., EPA registration number or registration certificate); (2) for the animal health product exclusions, evidence of applicable federal regulatory status under the Federal Food, Drug, and Cosmetic Act, the federal Virus-Serum-Toxin Act, or FIFRA (e.g., FDA approval documentation, USDA licensure, or EPA registration); and (3) for the OSHA Hazard Communication exclusion, a Safety Data Sheet (SDS) identifying the product's formal GHS hazard category classification under the 2012 OSHA Hazard Communication Standard (29 C.F.R. §1910.1200), as reflected in SDS Section 2. ACRC submits that these documentation standards are consistent with the plain language of PRC §42041(e)(2) and represent the minimum documentation necessary to substantiate each statutory exclusion.

ACRC represents manufacturers of agricultural chemical products, including FIFRA-registered pesticides, animal health products, and other products that may qualify under the OSHA Hazard Communication exclusion. We are currently reviewing member product portfolios and preparing documentation to support exclusion determinations where applicable.

ACRC appreciates CalRecycle's continued efforts to implement SB 54 and looks forward to ongoing collaboration to ensure accurate and consistent administration of the statute.

Respectfully submitted,

J. Mark Hudson

Executive Director
Ag Container Recycling Council
PO Box 1928

Apex, NC 27502
Email: mhudson@agrecycling.org
Office: 877-952-2272

Response to O-29-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-30: Food Northwest (Chris Cary)

Comment O-30-1

SB54 15-Day regulations
Comments by
Chris Cary, Policy Director
Food Northwest
8338 Alderwood Rd., Suite 160
Portland, Oregon 97220

I am commenting on the SB 54 15-day regulation changes on behalf of Food Northwest. Food Northwest is the food manufacturing trade association representing food processors and supplier members throughout the US states of Oregon, Washington, and Idaho. While we do not frequently comment on California lawmaking or regulatory processes, all of our members sell product into that state and therefore are potentially affected as "obligated producers" to register and participate in California's packaging EPR program. We join California with two of our states, Oregon and Washington, also implementing packaging EPR programs, so we have been active in representing our members in those states and engaging with lawmakers and regulators to provide the best outcomes as those programs are implemented as well.
The proposed regulations we are commenting on today provide a very laudable exclusion for food and agricultural commodities packaging that acknowledges the fundamental role packaging materials play in ensuring the safety of our food supply, and that the primary function of most, if not all, food packaging is to serve that purpose. Without appropriate packaging, much of the nation's food supply would not be able to be presented to consumers with extended shelf life, freshness, and functionality to meet FDA and state food safety criteria. While we also support recycling programs, use of recyclable materials in packaging to the extent possible, minimizing food waste, and minimizing the impact of packaging materials on the environment, we know the safety of our food to our consumers is the principal requirement.

The regulations as written are appreciated, however there is much room for improvement. The proposed process of individual producers making application for each product and package format would likely produce millions of applications where many foods have similar or identical food safety risks across product type and package

formats. A better approach to meet the goals for the food categorical exclusion would be to work with California Department of Public Health - Food and Drug Branch, independent, and industry food safety experts to develop clear language for excluded product types. In general, all food types are subject to FDA standards, and while those standards do not specify packaging, various products lend themselves to enclosed packaging using a range of packaging formats, so setting categorical exclusions should address which product categories that can be excluded, rather than individual packaging solutions.

The proposed rules contemplate the application would be rejected if there are "alternatives", but in many cases the food safety risk of any alternative is not an improvement over the current, and many products are currently or have historically evolved across a wide range of package formats, all designed to manage the same food safety risks that are inherent to a product category. For example, glass, metals, and plastics are often used interchangeably or in various combinations where the seal to prevent microbial or other degradation is based on the overall primary package format, and secondary and tertiary packaging play a structural and protective role to ensure integrity of the primary package.

Response to O-30-1

Comment rejected. Regarding the potential for notices to be voluminous, CalRecycle rejects that as an issue necessitating a revision because notifying CalRecycle and the public of claims that the Act does not apply to certain packaging serves at least two significant public interests. First, it establishes transparency so that the public can understand the effective scope of the Act and compliance with it. Second, it enables CalRecycle to assess the merits of claims that the Act does not apply. If CalRecycle receives voluminous notices concerning the same conflict and substantially identical packaging, it can effectively make that assessment for all such packaging simultaneously and put all affected businesses on notice that they might be violating the law. Regarding the recommendation to develop "clear language for excluded product types," CalRecycle declines to make that change because it is not necessary. If, as the commenter suggests will happen, notices pursuant to 18980.2(a)(2) are voluminous, the database will present information about them to enable identification of repetitive ones, which will enable businesses to submit notices based on the same conflicts cited in support of exclusions for packaging similar to theirs. Moreover, to the extent information in the notices themselves can be disclosed without revealing trade secrets, they are public records, and CalRecycle can publish such information to assist preparation of notices. No regulation is required for CalRecycle to publish demonstrative examples to assist regulated entities. Regarding the assertion that the proposed rules "contemplate the application would be rejected if there are 'alternatives,'" that assertion is overstated, and it is incorrect to the extent it interprets the regulation to require such rejection. Section 18980.2(a)(2)(C) does not call for rejection based on the mere existence of packaging that can avoid the conflict cited in the notice.

Instead, it requires CalRecycle to deem a notice incomplete if CalRecycle identifies such packaging and allow the submission of a revised notice addressing that packaging.

Comment O-30-2

The timing of implementation, without establishing a date for initial applications would imply producers could apply for the exemption within the first 30 days of final publication or at any time thereafter, acknowledging a renewal required after 5 years of approval. This will very likely create a large backlog of applications early in the process, with other deadlines for program implementation in the immediate and not too distant future for full supply reports. The initial reports due immediately (within 30 days of rules publication) are needed to develop source reduction baselines, goals and strategies for producers and Circular Action Alliance. While the proposed process presumed materials/packages and components would be exempt while awaiting Department decision on application, the ever-shifting landscape of materials volumes in this initial process which will take up to a year, would greatly hinder accurate and efficient source reduction process. Therefore, if individual applications process is kept, Food Northwest requests a one-year delay in the Source Reduction baseline determination, even if using 2023 volume data as currently required. This delay would allow producers and CalRecycle the necessary time to navigate the proposed exclusion process, while enabling data submittal to CAA to be accurate at time of submittal, rather than subject to multiple revisions once exclusion decisions are made, which would potentially create an ever-evolving source reduction baseline.

Response to O-30-2

Comment rejected. The commenter assumes there will be a "backlog of applications," but section 18980.2(a)(2) requires CalRecycle to notify the submitter of a notice within 90 days if the notice is incomplete. Moreover, the process set forth in subparagraph (E) for invalidating notices in the database (and thus rendering the packaging at issue no longer excluded from the definition of "covered material") affords the submitter ample time before such removal. The submitter will have 60 days to respond to CalRecycle's initial request for more information, an additional 60 days to respond to a second request for more information, and then an additional 180 days before the packaging will no longer have the benefit of the exclusion. Altogether, the process may take longer than 300 days, and it may be significantly more than that because CalRecycle determinations cannot be instantaneous. For these reasons, CalRecycle declines to adopt the commenter's recommendation for a one-year delay in "Source Reduction baseline determination."

Comment O-30-3

The proposed standard creates a publicly available database of applications and approved exclusions for products. While we understand this database would provide useful information to the public and represents transparency, we are concerned that business sensitive information, particularly proprietary packaging or product information,

would be exposed. While there are options for flagging confidential information, there is still significant concern about information that would remain public and potentially expose producers.

Food Northwest again applauds Cal Recycle for recognizing the crucial safety role packaging plays in our nation's food supply. We look forward to assisting our members understand the proposed rules as they are implemented in the coming years. Thank you for this opportunity to comment.
Respectfully submitted,
Chris Cary

Response to O-30-3

Comment rejected. The commenter states concern over disclosure of confidential information, but does not suggest any revision to the proposed regulations to address those concerns. To the extent the commenter intended to propose that notices submitted pursuant to section 18980.2(a)(2) be considered exempt from disclosure under the Public Records Act, CalRecycle rejects such proposal because it would be illegal. All records submitted to CalRecycle are subject to mandatory disclosure under the Public Records Act unless a statutory exemption from such disclosure applies. As Public Resources Code section 42060(a)(2)(E) acknowledges, trade secrets are exempt from public disclosure, and section 18980.14 of the proposed regulations set forth detailed instructions for how those submitting information to CalRecycle can avail themselves of that exemption. Moreover, the public database described in section 18980.2(a)(2)(D) will not disclose the notices themselves. That provision only requires the database to identify the packaging, products associated with the packaging, the data the notice was deemed complete, and the status of any review of the notice.

O-31: Coalition for Protien Packaging (Matt Klemin)

Comment O-31-1

Submitted on behalf of the Coalition for Protein Packaging (CPP)
Re: SB 54 – 15-Day Amendments (January 29, 2026 OAL Draft Regulations)
Subject: Section 18980.2. Categorically Excluded Materials – Safety, Mandatory Standards, and Implementation
Dear Director Heller,
The Coalition for Protein Packaging (CPP) appreciates the opportunity to submit comments on the 15-day amendments to the SB 54 regulations. CPP represents producers and suppliers of packaging used for federally regulated protein products and has engaged constructively throughout this rulemaking process.
CPP recognizes and appreciates CalRecycle's continued acknowledgment of the unique regulatory and food safety challenges associated with protein packaging, including the preservation of a categorical exclusion framework for packaging that must comply with federal requirements. That said, the exclusion, as amended, does not fully

consider the realities of the protein packaging supply chain, the federal regulatory framework, or the process to design, test, and implement packaging changes to meet safety and quality expectations. CPP requests that CalRecycle revert to the previously proposed language. In the alternative, because the amended language introduces substantive and material changes to the exclusion framework, CalRecycle should re-notice the revised provisions for a full 45-day comment period pursuant to Government Code §§ 11346.4 and 11346.8(c). Additionally, we offer the following comments and seek clarification on newly amended language to ensure the exclusion functions as intended, is administrable, and remains aligned with federal law.

Response to O-31-1

Comment rejected. This comment only broadly references the basis for its recommendation that CalRecycle restore the version of section 18980.2(a)(2) included in the 45-Day Changes. CalRecycle rejects that recommendation for the reasons stated in response to comment B-3-1. CalRecycle rejects the recommendation that the 15-Day Changes should be re-noticed and subject to a 45-day comment period. As explained in response to comment O-31-2, the Administrative Procedure Act does not require such a comment period.

Comment O-31-2

Background on Administrative Procedure Act Notice Requirements

CPP notes that these amendments were issued under a 15-day notice pursuant to Government Code § 11346.8(c), which permits modified text to be issued for limited comment only where the changes are “sufficiently related” to the originally noticed regulations. Where modifications are material or substantively alter the regulatory effect of the proposed text, the California Administrative Procedure Act requires issuance of a new 45-day notice under Government Code §§ 11346.4 and 11346.5 to provide full opportunity for stakeholder participation.

CPP respectfully submits that the January 29 amendments to Section 18980.2 materially alter the regulatory framework governing categorical exclusions by introducing new substantive criteria, documentation burdens, and interpretive standards that were not clearly foreshadowed in the prior proposal. Accordingly, to the extent CalRecycle determines not to revert to the previously proposed language, CPP requests that the amended provisions be re-noticed for a full 45-day comment period to ensure compliance with the Administrative Procedure Act and meaningful public participation.

Response to O-31-2

Comment rejected. The commenter incorrectly asserts that Government Code section 11346.8(c) does not permit a 15-day notice period when "modifications are material or substantively alter the regulatory effect of the proposed text." The commenter's reference to materiality and substantiveness appears to be a conflation of the two different types of changes that section 11346.8(c) exempts from the 45-day comment period requirement. The first applies to

"nonsubstantial" changes, which a regulation implementing the Administrative Procedure Act explains are those that "clarify without materially altering the requirements." See section 40 of title 1 of the California Code of Regulations (1 CCR 40). Such changes do not require any comment period. The other exemption in section 11346.8(c) from the 45-day comment period requirement shortens the required period to 15 days and applies if revisions are "sufficiently related to the original text." The regulation relevant to that exemption explains that a change is "sufficiently related . . . if a reasonable member of the directly affected public could have determined from the notice that [such a change] could have resulted." See 1 CCR 42. This comment itself acknowledges that the changes are closely related to the previous text: It notes that the regulation at issue preserves "a categorical exclusion framework for packaging that must comply with federal requirements" but objects to the amendments to that framework. Moreover, the changes in section 18980.2(a)(2) modify various details contained in the 45-Day Changes but do not change its fundamental requirements and related procedures, and they were made in response to comments CalRecycle received concerning those requirements and procedures. See, for example, comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for changing it instead of removing it. Those comments and CalRecycle's changes in response to them prove that reasonable members of the affected public understood that such changes might be made. A 15-day comment period was therefore sufficient pursuant to the relevant regulation (1 CCR 42).

Comment O-31-3

Ambiguity in “Safety and Structural Integrity” Language Renders The Categorical Exclusion Elusive and Unobtainable

The amended regulations require that excluded packaging “satisfies all applicable mandatory standards for safety and structural integrity of packaging.” In the context of protein packaging, “safety” encompasses multiple, interrelated considerations, including:
• Food safety and food protection, including prevention of spoilage, oxidation, microbial growth, and foodborne illness;
• End-user (consumer) safety, including protection from exposure to pathogens;
• Worker safety throughout the supply chain, particularly where packaging has organic residues.

Protein packaging that fails to perform as intended can create safety risks for:
• Processing plant employees;
• Processor distribution center employees;
• Retail distribution center employees;
• Retail store employees;
• Individuals involved in collection, disposal, or further processing of used packaging.

Improper handling or failure of such packaging can also lead to broader public health risks, including cross-contamination of adjacent food products, attraction of rodents or other organisms in retail and distribution environments, and increased risk of pathogen spread.

The proposed revisions are vague such that they inhibit the opportunity for a Producer to avail itself of the categorical exclusion due to its lack of clarity as to what CalRecycle intends “safety” to encompass, be it food safety, consumer safety, worker safety, or all of the above. To ensure an exclusion process that is practically achievable in its application and purpose, CPP recommends reverting to the previously proposed language in Section 18980.2., which outlined a stringent yet feasible exclusion process for USDA and FDA-regulated packaged products.

Similarly, “structural integrity” is not limited to physical strength or durability, but includes functional performance critical to food safety, including:
• Oxygen and moisture barrier properties;
• Prevention of oxidation;
• Prevention of microbial intrusion;
• Maintenance of shelf life and product wholesomeness.

Packaging may appear structurally intact from a mechanical perspective while still failing to protect against food safety risks. CPP asserts that functional food-safety performance is included within the meaning of “structural integrity.” However, due to the lack of clarity as to what the term encompasses, CPP again recommends reverting to the previously proposed language in Section 18980.2., which outlined a stringent yet feasible exclusion process.

Response to O-31-3

Comment rejected. The commenter contends that the term "safety," within the phrase "safety and structural integrity of packaging," is vague, but that term is plain on its face. Moreover, in section 18980.2(a)(2) and (a)(2)(B), the only two places where the term appears, the term is circumscribed such that it only concerns the packaging and legal restrictions applicable to packaging. That usage is readily understandable without qualification, and the commenter's arbitrary identification of potential qualifiers for the term does not render it vague or ambiguous. The commenter's assertion regarding the terms "safety" and "structural integrity" also does not support the commenter's recommendation to revert section 18980.2(a)(2) to the version in the 45-Day Changes because those terms were included alongside each other in that version as well. The same terms cannot be vague in one version of the regulation but not the other. Regarding the comment's more general assertion that reverting to the 45-Day Changes is necessary to establish a "feasible exclusion process," CalRecycle rejects this comment for the reasons provided in response to comment B-3-1.

Comment O-31-4

Reference to "Mandatory Standards" Is Insufficient to Capture the Food Production Regulatory Process

CPP appreciates CalRecycle's recognition that compliance with federal food safety requirements must be considered when evaluating packaging requirements under SB 54. To support consistent and technically sound implementation, additional clarification is needed to ensure that the phrase "mandatory federalrequirements" is interpreted in a manner consistent with how federal food safety regulation operates in practice in the meat and poultry sector.

In federally inspected meat and poultry production, food safety requirements are implemented through the continuous inspection framework established under the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA). Within this framework, many requirements are expressed through performance standards, inspection expectations, and validated food safety systems rather than material-specific mandates. For example, 9 CFR 416.4(d) requires that product be protected from adulteration during processing, handling, storage, loading, unloading, and transportation, but does not prescribe specific packaging materials or technologies. Federal law generally establishes required food safety outcomes, including prevention of adulteration, prevention of contamination, and maintenance of sanitary processing and distribution conditions, while allowing producers flexibility in how those outcomes are achieved under continuous federal inspection. Consistent with this structure, packaging systems used in federally inspected facilities are selected and maintained based on demonstrated performance in protecting product safety and integrity under real-world production, storage, and distributionconditions. Over time, industry has developed packaging technologies and material systems designed to meet these performance-based requirements while maintaining food safety, shelf life, and product integrity. Packaging materials used in federally inspected establishments must also be safe for their intended use under the Federal Food, Drug, and Cosmetic Act and are typically supported by supplier guaranties demonstrating compliance with applicable food contact material requirements, rather than by federal mandates specifying particular packaging materials or formats.

Accordingly, "mandatory federal requirements" should be interpreted to include not only explicit statutory and regulatory requirements, but also requirements that are functionally mandatory to maintain compliance with federal food safety law and federal inspection requirements. In practice, this includes requirements necessary to maintain validated food safety systems, maintain inspection eligibility, and ensure compliance with federal adulteration and sanitation standards. A narrow interpretation limited only to explicit federal regulatory text requiring specific packaging materials or configurations would not reflect how federal food safety regulation operates in practice and could create unintended compliance conflicts.

The 15-day modification requiring producers to cite specific "mandatory" federal rules does not fully account for the continuous inspection structure described above. In

federally inspected operations, packaging systems that are part of validated food safety systems are effectively mandatory for continued operation, even where the specific packaging material is not named in regulation. Requiring processors to treat these systems as discretionary simply because the specific material is not listed in the Code of Federal Regulations could create situations in which facilities are forced to choose between maintaining validated food safety systems and attempting to justify packaging systems that are already necessary to maintain regulatory compliance.

CPP also notes that packaging changes in federally inspected facilities frequently require significant evaluation, validation, and operational transition timeframes. Requiring substitution of packaging systems that have not been validated under real-world conditions could create potential food safety risks and supply chain disruption, and food quality issues. CPP respectfully encourages CalRecycle to interpret and apply the “mandatory federal requirements” provisions in a manner that reflects the performance-based nature of federal food safety regulation and the operational realities of federally inspected food production. Doing so will help support environmental objectives while maintaining alignment with existing federal food safety requirements and avoiding unintended food safety or operational consequences.

Response to O-31-4

Comment rejected. The commenter's stated concern is over interpretation of the phrase "mandatory federal requirements." But that term does not appear anywhere in the regulations or in the Act. Instead, section 18980.2(a)(2) uses the phrase "mandatory federal regulations, rules, or guidelines," and any ordinary reader can understand that that phrase refers to legal restrictions, such as those concerning a physical good or a course of conduct. Even if the commenter intended to refer to that phrase, the commenter's concern is unwarranted. The commenter asserts that it should be explicit that the regulation should encompass "requirements that are functionally mandatory to maintain compliance with federal food and safety law and federal inspection requirements." In context of section 18980.2(a)(2), however, it is immaterial whether a requirement imposed by "mandatory federal regulations, rules, or guidelines" is expressly stated or are "functionally mandatory" for purposes of complying with food and safety law and inspection requirements. In either case, the requirements must be met to comply with the relevant federal legal restrictions, and the exclusion described in 18980.2(a)(2) is available when those requirements and the requirements of the Act cannot be met simultaneously. To the extent the commenter objects to inclusion of the qualifier "mandatory," CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which explains that the regulation does not require a federal regulation to dictate usage of specific packaging to be considered "mandatory." As the commenter repeatedly acknowledges, federal laws that do not mandate usage of specific packaging nonetheless impose "requirements," which are, by definition, "mandatory." Regarding "packaging systems that have not been validated under real-world conditions," CalRecycle rejects that as a basis for revising the

regulation because, as explained in greater detail in response to comment B-3-1, section 18980.2(a)(2)(B)(i) through (iii) does not require consideration of packaging that are merely theoretical alternatives (i.e., do not exist) and not known to be possible "under real world conditions."

Comment O-31-5

The Exclusion Does Not Contemplate the Complexities of Developing and Implementing Packaging Changes

The exclusion appears to require producers to prove a negative—to demonstrate that no alternative packaging is reasonably possible—without a framework for what CalRecycle will consider as evidence of “reasonably possible.” The amended regulations do not give producers direction for how packaging is treated during the period that it’s under review. It also doesn’t give producers direction on how long they have to make packaging changes or submit additional support for the exclusion, if it’s denied. To develop, test, and implement packaging changes or illustrate that such development and testing did not produce a reasonable alternative takes time and potential engagement with numerous stakeholders from packaging suppliers to customers to regulators. This is time that is not contemplated under the current exclusion criteria.

Requested Action

CPP requests that CalRecycle revert to the previously proposed language. In the alternative, because the amended language introduces substantive and material changes to the exclusion framework, CalRecycle should re-notice the revised provisions for a full 45-day comment period pursuant to Government Code §§ 11346.4 and 11346.8(c). Notwithstanding our preferred path forward andif CalRecycle is inclined to move forward with its amendments, CPP requests that CalRecycle revise the amended language to contemplate the complexities of the protein packaging supply chain, including the time it takes to develop, test, and seek appropriate approvals for packaging alternatives.

Per this alternative, CalRecycle should provide a clear framework for demonstrating feasibility with an implementation timeline that allows producers to attempt to redesign and test potential packaging alternatives for quality, safety, and USDA and FDA compliance. Conceptually, the process would exclude these products from SB 54 regulations for a specified period that allows producers to review potential alternative options. Prior to the end of this period, if a producer has not found alternative packaging that meets CalRecycle’s expectations and those of USDA and FDA, while also protecting food safety and quality, it would submit an exclusion request pursuant to the feasibility framework. To work, the feasibility framework must contemplate broader food safety, quality, and freshness considerations than that incorporated under the current exclusions.

Further, redesigning and testing alternative packaging options takes time to properly assess food safety and quality impacts. Then, if the producer finds a feasible alternative, it takes additional time to get proper agency approval; procure sufficient quantities of the packaging for production; and satisfy any regulatory or customer labeling requirements related to the packaging. If CalRecycle is not inclined to revert to the categorical exclusion as originally proposed and instead is more apt to consider this alternative, it should allow applicable Producers who qualify for the previously-finalized exclusion to avail themselves of that option or for a period of at least two years to afford reasonable time to fully consider and implement feasible alternatives.

While CPP is disappointed that the re-proposed language essentially renders the categorical exclusion inert due to the addition of vague and cumbersome language and requirements, we do appreciate CalRecycle's collaborative approach and its efforts to implement SB 54 in a manner that protects environmental goals while preserving food safety, worker safety, and food security. CPP and its members remain available to assist CalRecycle as a technical resource as these regulations move toward finalization and implementation.

Respectfully submitted,

Coalition for Protein Packaging (CPP)

Response to O-31-5

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises objections substantially the same as those raised in this comment and proposes the same change (reverting to the 45-Day Changes version of section 18980.2(a)(2)), and B-56-2, which addresses the framework for CalRecycle's consideration of what is "reasonably possible." Section 18980.2(a)(2)(C) does not specifically require "evidence," and, in combination with subparagraph (B), makes clear that description of the packaging at issue, identification of the conflict, and an explanation of how avoiding it is not reasonably possible will be sufficient for the notice to be deemed complete. Furthermore, the process set forth in subparagraph (E) establishes an interactive process under which the submitter of a notice must respond to specific requests for additional information from CalRecycle. That process allows flexibility for CalRecycle to establish what supplementation is necessary on a case-by-case basis; such an approach is necessary because the facts that must be proven and the additional explanation that may be necessary are likely to vary greatly across scenarios.

Furthermore, the commenter's concern over timelines is unwarranted. The proposed regulation explains that CalRecycle must give notice of its completeness determination within 90 days. It further establishes the duration of the interactive process for CalRecycle request for supplemental information and the 180-day period before packaging found not to be entitled to the exclusion will be deemed "covered material." These elements accomplish what the commenter

proposes the regulations do: allow a "timeline that allows producers to attempt to redesign and test potential packaging alternatives."
In addition to the reasons provided in response to comment B-3-1, CalRecycle rejects the commenter's suggestion that section 18980.2(a)(2) revert to the 45-Day Changes version because that version would not address any of the concerns the commenter has raised concerning timelines and the need to redesign and test packaging. Both versions establish the same timeline for removal of notices, and require a showing that complying with it and federal requirements is not possible; the only practical difference under the 15-Day Changes that might affect the challenges the commenter identifies is that entities cannot exploit 18980.2(a)(2) through bad-faith or incomplete proposals. With respect to the commenter's alternative approach—which is described more in concept than in specifics but that CalRecycle understands to be a general exclusion until producers can "review potential alternative options—CalRecycle rejects it for two reasons. First, it ignores the fact that producers have already been on notice for several years that they will likely have obligations under the Act. It is unreasonable for producers not already to have begun considering how they might redesign packaging to comply with the Act. Second, the proposal would appear to apply to all producers that use food or agricultural packaging and would "contemplate broader food safety, quality, and freshness considerations than that incorporated into the current exclusion." That suggestion is inappropriate because it is untethered to the basis for section 18980.2(a)(2): unavoidable conflicts with federal requirements. To the extent packaging raises safety, quality, and other practical challenges but not a challenge based on a conflict with federal law, the exemptions under Public Resources Code section 42060(a)(3) and (4) provide the appropriate remedy and are addressed in section 18980.2.4 of the proposed regulations.
Regarding the suggestion for a "full 45-day comment period," CalRecycle rejects that suggestion. The commenter does not allege that such a comment period was required regarding the revisions to the 45-Day Changes, and, for the reasons provided in response to comment O-31-2 such an assertion would be incorrect. Nor does the commenter explain why a 45-day comment period would be required to accommodate the suggestions offered.

O-32: California Restaurant Association (Matt Sutton)

Comment O-32-1

February 13, 2026
Csilla Richmond
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act
Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 “I” St., MS-24B, Sacramento, CA 95814
To: regulations@calrecycle.ca.gov

Subject: Proposed Regulations for the Plastic Pollution Prevention and Packaging Responsibility Act

The California Restaurant Association (CRA) is the definitive voice of the state's food service industry, representing the nearly 22,000 eating establishments that employ individuals, serve guests, and are critical contributors to local economies – all of which will be impacted by CalRecycle's proposed SB 54 regulations and revisions. Restaurants are among the most regulated employment sectors and regularly operate on razor-thin economic margins. Given this, the CRA appreciates the opportunity to submit comments regarding both CalRecycle's proposed regulatory revisions and unrevised regulations pertaining to SB 54's implementation.

We have provided written comments throughout both the legislative and regulatory processes and stand by those comments and concerns.

We also align with the comments provided by the California Chamber of Commerce and are taking this opportunity to amplify those concerns specific to the restaurant community, as well as raise previous issues that remain unresolved. The ongoing concerns of the restaurant community remain – and the consequences of those issues being unresolved are nothing short of alarming for the industry and the state of California.

While the restaurant community has been a key part in waste reduction efforts, CalRecycle's amendments and the SB 54 regulations as a whole are unresponsive to the realities of the restaurant community. The framework fails to find a balance between meeting the goals of SB 54 while reducing undue hardship on the already battered restaurant community.

By imposing source-reduction caps without consideration for population or sales growth, and standards that neglect real-world food safety and operational feasibility, the regulations collectively set up restaurants to fail.

These requirements threaten the safety, availability, and affordability of essential products by forcing packaging decisions that compromise food shelf life, food safety, and sterility, as well as the efficient distribution across the state and nation, without taking into consideration the unique challenges associated with foodservice packaging.

For instance, packaging frequently comes into direct contact with hot foods, oils, liquids, and sauces. All the while, packaging must maintain food safety standards and prevent leakage, contamination, and spoilage. Furthermore, changing vendors or product specifications is a complex and time-consuming undertaking, including but not limited to tasks such as vendor vetting, product testing, and distribution. As a result, packaging formats that may appear theoretically operational from a materials perspective may not be safely deployable in foodservice settings.

Given the abovementioned challenges and the monumental task of a 65% reduction and recycling rate by 2032 proposed under this regulatory scheme, we ask that CalRecycle, consider the burden of blanket mandates for restaurants within SB 54 and across local jurisdictions. Regulations in SB 54 must also ensure that recycling facilities are in place to reduce the costs to neighborhood restaurants that participate in the collection and disposal of covered products.

Additionally, we ask that the proposed regulations consider the economic impact on restaurant operators specifically. According to CalRecycle's Notice of Proposed Action Document, these regulations are estimated to impact 58% of small businesses. We ask that these regulations maintain exemptions for "small producers" from compliance requirements in the Act so that the financial impacts are lessened.

Additionally, we would like to provide further restaurant-specific comments regarding the proposed regulations that would help achieve the ambitious goals of SB 54 without overburdening neighborhood restaurants.

I. Ability for entities to reach an agreement on who will report to CAA with respect to a given item.

Recommendation: Model language like Minnesota's EPR statute to help ease the burden on industry and allow businesses to comply with this law effectively.

- In defining producers, Minnesota's statute, Minn. Stat. § 115A.1441, Subd. 26(a)(6), states that "[a] person is the producer of a covered material sold, offered for sale, or distributed in or into this state, as defined [in the preceding clauses], except: (i) where another person has mutually signed an agreement with a producer . . . that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material under this act. In the event that another person is assigned responsibility as the producer under this subdivision, the producer [under the preceding clauses] must provide written certification of that contractual agreement to the producer responsibility organization[.]"
- This language allows for an entity identified as a producer to contractually assign that responsibility to any willing party, so long as that party (1) joins a registered PRO and (2) provides written certification of the contractual agreement to the PRO.
- Not only will this allow businesses to comply with SB54 in a way that fits their individual business models, but it will cut down significantly on administrative burden to both CalRecycle and CAA in having to field questions and give guidance on every possible producer obligation scenario that might arise.

Additional Context:

- We have encountered multiple instances where reasonable minds may differ as to whom the Obligated Producer should be under the law. (Is the item "branded?" What if it is co-branded? Is the party a "licensee" of the brand?) At some point the discussion must end to meet deadlines, and the parties

necessarily come to a contractual agreement to settle the debate.
• As written, the draft SB54 regulations appear to allow for this, but as written, the reader must first cross-reference at least two statutes and sift through extremely long hierarchies for determining the producer of both food service ware and packaging.
• With so much to parse through, the process of identifying who is or may be the obligated producer in California is rife with opportunity for multiple (and conflicting) interpretations.
• Even though the law provides for a scenario where there are “multiple brands or trademarks that may be designated [as the producer]”, proposed 14 CCR 18980.1.1(e)(5) states “the owners of brands or trademarks may agree among themselves to designate one of the brands or trademarks [as the producer], provided that the owner or a licensee of that brand or trademark satisfies the criteria to be the producer under this subdivision.”
• Even assuming all parties can agree on reaching this point in the “decision tree”, it appears that the terms “owners of brands or trademarks” and “owner or a licensee of that brand or trademark” are interchangeable, which muddies the waters on who may enter into such an agreement.
• We do not believe California intends to prohibit contractual agreements on the topic – especially since the ability to enter into such an agreement clearly exists in some form as written1.
• As it stands, however, such agreements appear to be technically allowed, but the waters are so muddied that it will be nearly impossible for parties to come to any agreement – and certainly not without long and protracted negotiations.

II. Narrow the scope of covered materials to only those that enter the residential waste stream.

Recommendation: All packaging & food serviceware that is destined for the residential (including single-family and multi-family) sector should be included in EPR programs. Packaging and food serviceware disposed of at restaurant should NOT be in scope (aka dine-in deduction).

• Colorado’s EPR law has language for this: "Packaging material" covered under the law explicitly does NOT include packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer.
• To further this point, AB 827 requires restaurants/QSRs to provide front-of-house collection for compost, recycling & landfill.
• The industry manages and pays for back-of-house packaging recovery, so commercial/B to B should be out of scope.
California Restaurants are already subject to comprehensive recycling requirements, including the collection of organics, plastics, and general waste. All commercial food service establishments that provide food for purchase and immediate consumption on site must comply with AB 827 and ensure that recycling and organic collection bins are easily accessible to customers. These programs come at a great cost to operators –

many of whom have been operating this program since 2020. Existing law already puts the responsibility on the operator to facilitate and pay for this collection, and mandating additional recycling requirements is duplicative of existing efforts. Despite the introduction of more recyclables being available for consumption and a possible reduction in their disposal costs for restaurants, there is a strong likelihood of an increase in services for recycling and composting.

III. Request extension of upcoming reporting and fee deadlines based on timing of final regulations and provide subsequent guidance/education.

Under these regulations, covered entities will be required to pay an initial payment of $5 billion over 10 years, with $500 million starting on March 1, 2027, to the California Plastic Pollution Mitigation Fund. Extended Producer Fees would start on July 1, 2027.

Additionally, members of the PRO and the community of Independent Producers are required to comply with annual reporting requirements for covered materials, including all source reduction baseline reports, starting on July 1, 2026.

For these reasons, we believe that CalRecyle should exercise its regulatory authority and grant an extension to the start of collection for the proposed fund and Extended Producer fee timelines in alignment with providing future guidance towards the end of 2027.

1 And – even if it didn't – California's courts have made clear that if a statute is silent on a right that exists under common law, the common law right must remain intact.

Response to O-32-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-32-2

IV. Overly Rigid Exclusion Criteria & Lack of Standards for Exclusion Denial Recommendation: 1) Revise Section 18980.2 to include feasibility and proportionality in the analysis, and 2) establish clear, reasonable criteria for evaluating conflict claims.

The three-pronged, overly restrictive test proposed by CalRecycle ignores cost feasibility and the unique challenges associated with food packaging, as previously mentioned. 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. Moreover, 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 limiting agency review, enabling the Department to overrule the producer's determination if it imagines any way the conflict could be avoided. To summarize, CRA

urges CalRecycle to 1) revise Section 18980.2 to include feasibility and proportionality in the analysis, and 2) establish clear, reasonable criteria for evaluating conflict claims

Response to O-32-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. That response addresses objections that are substantially the same as those raised in this comment, including the concern over feasibility and packaging that is merely theoretical. As explained in greater detail in that response, the three-pronged analysis added in section 18980.2(a)(2)(B) does not change the scope of the exclusion; rather, it adds clarity by establishing an objective, fact-based framework for the "not reasonably possible" standard. That addition constitutes the "criteria for evaluating conflict claims" that the commenter suggests be added to the proposed regulation. CalRecycle also rejects this comment because it is based primarily on "unique challenges associated with food packaging," not the necessity of an exclusion due to conflicts with federal requirements. The Act (Public Resources Code section 42060(a)(3) and (4)) and the proposed regulations (section 18980.2.4) establish exemptions to address such issues; one such exemption (section 42060(a)(3)) is expressly for "unique challenges."

Comment O-32-3

V. Approved List and Guidance

Recommendation: 1) Create a pre-cleared list of restaurant-relevant packaging formats that are presumed compliant; 2) Provide clearer direction around food-contacting items like gloves, meat packing, etc., while excluding these items from waste disposed of, and 3) consider lids and bases as components even if combo-packed, and allow each party to meet the recyclability requirements in accordance with this.

CalRecycle should provide clearer directions around items that come into contact such as gloves, meat packing, etc., and exclude these items from waste disposed of. Additionally, a CalRecycle or PRO-maintained pre-cleared list of restaurant-relevant packaging formats (e.g., PP deli containers, PET cold cups, fiber clamshells) that are presumed compliant would greatly aid the industry in achieving SB 54’s goals. This list should include “best practices” to help keep PP containers on the said safe approved list. Additionally, CalRecycle should consider lids and bases as components even if combo-packed, and allow each part to meet the recyclability requirements in accordance with this.

VI. Unimplementable Static Source Reduction Targets

Recommendation: The accounting and reduction calculations should account for growth, not penalize it – the source reductions should be reworked to reflect this.

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 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. The accounting and reduction calculations should account for growth, not penalize it.

VII. Malus Fees & Inconsistencies with Prop 65

Recommendation: Remove malus fees – resolving inconsistencies with Prop 65.

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. Prop 65 does not restrict the use of chemicals – instead, it mandates consumer warning requirements based on exposure levels to certain listed chemicals. The malus fee does not accurately represent the will and intent of voters regarding Prop 65, which, once again, was created to ensure that consumers are aware of chemical exposures, not eliminate those exposures entirely. CRA urges CalRecycle to remove these mandated malus fees.

VIII. Resolve Conflicts with SB 343

Recommendation: Exercise CalRecycle's regulatory authority by adopting a provision that determines that all covered material under SB 54 meets the criteria of SB 343.

A major concern of CRA is SB 343's restrictions on communicating to consumers instructions for how to recycle covered material. 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 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.

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.

However, 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 CRA 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.

IX. Utilization of 2027 Calendar Year Data

Recommendation: Utilize calendar year 2027 data as the operative compliance year to be measured against the 2023 baseline.

The CRA requests CalRecycle revise Section 18980.9 to allow producers to utilize calendar year 2027 data as the operative compliance year for purposes of determining compliance with the January 1, 2027. 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. 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 is complete, accurate, and collected under clear, prospective standards.

X. Compostable Compliance Pathway

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 a crisis-like challenge for

restaurants, SB 54's success depends on ensuring that compostable pathways remain viable and do not become artificially shut out.

XI. Questions

• Will there be a formal exemption for materials that are essential for food product integrity (e.g., grease-resistant barriers or heat-retaining films) where no viable recyclable alternative currently exists?
• How will fees be adjusted for "early adopters" who have already reduced plastic weight production but are now being asked tocontribute to the PRO?

Response to O-32-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-32-4

Conclusion

CRA urges CalRecycle to reconsider both the January 2026 changes to Section 18980.2 and the unrevised sections. As drafted, the revisions and regulations at large would undermine California's restaurants' ability to package food safely under well-established federal standards. They impose unrealistic burdens at a time when the California restaurant community has never been under such duress and continues to struggle to stabilize after the COVID-19 pandemic and associated policies.

It is imperative that CalRecycle consider the real-world implications for producers under SB 54 and require clear, objective standards – allowing them to continue contributing to California's economy while meeting the ambitious goals of SB 54. We appreciate the opportunity to provide comments specific to the restaurant community and the catastrophic impacts that lie ahead if left unresolved. We look forward to achieving the spirit of SB 54 through the collective efforts of stakeholders in the food service community as we work towards the shared goal of increased recycling rates for product packaging.

Matt Sutton
Senior Vice President, Government Affairs & Public Policy
California Restaurant Association

Response to O-32-4

No response to this portion of the commenter's submission is necessary because it is a summary of previous, more detailed portions of the submission and does not add suggestions or objections not already expressed in those portions. CalRecycle has responded to those portions separately.

O-33: Western Growers Association (Gail Delihant)

Comment O-33-1

February 13, 2026

Submitted Electronically via: **https://calrecycle.commentinput.com/?id=3ikJbFpZN**

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: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period

Dear Ms. Richmond:

Western Growers Association appreciates the opportunity to provide comments to CalRecycle on the proposed Senate Bill SB 54 (Allen, 2022) ("SB 54" or the "Act") Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026 ("Draft" or "Draft Regulations"). Western Growers is an agricultural trade association headquartered in California. Western Growers' members are small-, medium-, and large-sized businesses that produce, pack, and ship fruits, vegetables, and tree nuts from our home states of California, Arizona, New Mexico, and Colorado. Western Growers' members account for roughly half the annual fresh produce grown in the United States, providing consumers with healthy, nutritious food. Unlike other packaged products, fresh produce is alive, and packaging allows the preservation of food safety and quality from farm to fork. Likewise, proper packaging is necessary to ensure consumer safety and satisfaction for meat and dairy products.

Western Growers supported the August 22, 2025, SB 54 Draft Regulations as the language offered a viable and clear framework for compliance for fresh produce packaging with the ability to apply for a categorical exclusion, as permitted by Public Resource Code section 42060(a)(3)- (4) and as required by section 42060(b), in written comments submitted on October 7, 2025.1 While we appreciate the Department's continued efforts to develop workable and effective regulations to implement SB 54, the revised language in Section 18980.2 Categorically Excluded Materials is deeply concerning. The January 29, 2026, revisions introduce requirements that are effectively impossible for fresh produce and meat packaging to satisfy. They would eliminate the workable framework CalRecycle proposed in August 2025 and replace it with an

exclusion pathway that is effectively unattainable, raising serious concerns regarding the ability of regulated entities to comply.

1 Western Growers' October 7, 2025 written comments detailed the importance of specific packaging for
fresh produce and the current state of fresh produce packaging and provided links to over fifty relevant
documents including reports, studies, publications, and informational resources pertaining to fresh
produce packaging, GHG emissions, and food safety requirements.

Response to O-33-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission. To the extent this comment raises objections or suggests changes to the proposed regulations, CalRecycle has responded to those objections and suggestions in response to those later portions.

Comment O-33-2

The Proposed Revisions to Section 19890.2 Would Impermissibly Modify SB 54's Statutory Requirements

SB 54, in Public Resources Code section 42060(b), provides that CalRecycle must ensure that its implementing regulations "consider guidelines … issued by the United States Food and Drug Administration [FDA] and the United States Department of Agriculture [USDA]," "do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture," and "consider requirements imposed by other California state agencies." CalRecycle is expressly prohibited from imposing any requirement in direct conflict with "regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities, requirements for microbial contamination, structural integrity, or safety of packaging under the Federal Food, Drug, and Cosmetic Act [FDCA] (21 U.S.C. Sec. 301 et seq.), 21 U.S.C. Sec. 2101 et seq., [or] the federal FDA Food Safety Modernization Act [FSMA] (21 U.S.C. Sec. 2201 et seq.)…."

CalRecycle is proposing to unilaterally limit this restriction on its regulatory authority by reading the qualifier "mandatory" into the law. This proposal conflicts with SB 54's limitations on CalRecycle's regulatory authority because guidelines, by their nature, do not impose binding obligations. FDA and USDA guidance documents are science-based standards that, based on current scientific evidence, guide development of fresh produce and meat packaging systems that comply with mandatory federal food safety statutes and regulations, including requirements for microbial contamination, structural integrity, or safety of packaging under FDCA and FSMA. CalRecycle's proposal is based on the incorrect assumption that it can impose regulatory requirements that conflict with FDA or USDA guidance (except for nonexistent "mandatory" guidance).

CalRecycle must correct this error by removing the qualifier “mandatory” from Section 19890.2 in each place it appears.

Response to O-33-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. Also, this comment's description of the FDA and USDA "guidance documents" confirm that the proposed regulation is appropriate as written. The commenter explains that such documents are "standards" that "guide development of . . . systems that comply with mandatory federal food safety states and regulations, including requirements . . . under FDCA and FSMA." In other words, the commenter concedes that the guidance documents concern how packaging can comply with "binding obligations." The effect of section 18980.2(a)(2) is to ensure that the Act does not require use of packaging that cannot do so.

Comment O-33-3

CalRecycle Has Proposed an Exclusion Pathway that Is Impossible to Satisfy

CalRecycle’s proposal requires proof that no alternative packaging or packaging redesign would satisfy all applicable mandatory standards. This requires entities to prove a negative and, as a result, is impossible to satisfy. Film plastic and plastic clamshell packaging comply with federal guidance and federal legal requirements. They are highly effective at preventing microbial contamination, maintaining product integrity, and extending shelf life, while aligning with FDA guidance and established industry standards. No commercially viable alternative currently exists for film plastic packaging that provides equivalent protection, shelf life, and control contamination for fresh produce and meat products in accordance with FDA food safety guidelines. To satisfy CalRecycle’s proposed criteria for a categorical exemption, an entity would have to identify every possible alternative packaging, including alternatives that clearly do not comply with federal law and guidance, and every possible packaging redesign (i.e., alternatives that have not yet been developed). It simply is not reasonably possible for an entity to identify and evaluate all possible alternatives. As structured, the exclusion pathway is illusory rather than attainable.

Furthermore, attempting to do so identify and evaluate all possible alternatives would be extremely costly for California’s agricultural community, causing consumer food costs to increase in conflict with California’s policy to ensure every Californian has equitable access to safe, healthy, and affordable food. The timeframe to develop new food packaging materials is substantial. Products must undergo rigorous extraction studies and testing to determine compliance with the Code of Federal Regulations (CFR), a process that can take years. The resulting data must then be submitted to the FDA for review, a process which can take several additional years. This does not include the time needed to scale production to a commercially viable level for use across the grower community. Scaling production of any new materials will take billions of dollars and decades to achieve. Even when packaging materials are already FDA compliant,

development timelines often span multiple years to complete. This phase between lab validation and market-ready production is very high-risk and many startups fail during this phase due to misjudged scaling, funding gaps, and operational hurdles. And, at the end of this very expensive and time-consuming process, there is no guarantee that the alternative evaluated will be viable or even approved by FDA or CalRecycle. An ever-changing regulatory landscape adds to this uncertainty. These additional costs would be passed through to California consumers, significantly increasing the cost and limiting the availability of fresh and healthy food.2 And, as this lengthy process plays out, entities would be stuck – unable to obtain a categorical exclusion and unable to comply with SB 54.

As a practical matter, no grower, packer, or shipper of fresh food packaging will be able to provide the information required by Section 18980.2(a)(2)(B) and, therefore, no packaging will ever qualify for the exclusion. Neither SB 54 nor CalRecycle's implementing regulations can require this impossibility.

Response to O-33-3

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same objections as does this comment. Furthermore, this comment incorrectly states that a notice "would have to identify every possible alternative packaging, including alternatives that clearly do not comply with federal law and guidance." Section 18980.2(a)(2) does not state such a requirement. It only requires consideration of alternative packaging that would comply with federal requirements. The commenter also claims that the proposed regulation would require evaluations of "all possible alternatives," but 18980.2(a)(2) does not use that phrase. Rather, it concerns alternatives that exist and can be used to avoid the legal conflict, rendering the exclusion unnecessary.

Comment O-33-4

CalRecycle Has Not Adequately Evaluated the Additional Economic and Climate Impacts of the Proposed Changes to Section 19890.2

The Department has also not adequately considered the compliance costs, legal risks, and market impacts created by the revised language. **Fresh produce producers have advised that they will be unable to sustain the program fees imposed by the regulation and will be unable to meet the required recycling rates for fresh produce packaging**. The Legislature included several key provisions in SB 54 that are intended to reduce the impact of the law on the agricultural community, to avoid conflicts with federal laws, regulations, and guidance that protect food safety and decrease spoilage, to reduce greenhouse gas (GHG) emissions associated with food waste, and to reduce the extent to which implementing SB 54 may make it more difficult for disadvantaged communities to afford healthy and safe food.

One of the profoundly adverse consequences of the SB 54 regulation as written, in addition to wasting food, is the increase in GHG emissions that would be caused by increasing food waste. California has long been a champion for developing programs aimed at reducing GHG emissions, including SB 1383. A progress report from the California Compost Coalition on the state's Shortlived Climate Pollutant Regulation (SB 1383) determined that instead of achieving a reduction in commercial organic waste disposal, there was a 27% increase in 2022. 3 In addition to not meeting the reduction goal, the cost associated with implementing SB 1383 doubled since the law was first passed in 2020. A 2023 report from the Little Hoover Commission, a California state oversight agency, called for a pause on implementing SB 1383, allowing more time for education and for jurisdictions around the state to create local organics recycling systems. 4
CalRecycle was not able to achieve the SB 1383 mandated 75% reduction by 2025 goal, which in comparison to SB 54 is an order of magnitude smaller and was still impossible to achieve with the time and financial resources allotted.

SB 1383 also required the California Air Resources Board (CARB) to develop the broader Shortlived Climate Pollutant (SLCP) Reduction Strategy. CalRecycle's organic waste regulations are the primary mechanism used to hit the "waste sector" portion of CARB's strategy. Therefore, CalRecycle's data feeds directly into CARB's "Scoping Plan," which is the state's master plan for reaching carbon neutrality. The impact of SB 54 on GHG emissions from food waste will greatly hinder compliance with these goals.

The Oregon State Department of Environmental Quality (DEQ) performed a study to assess the connection between food waste and packaging. The report's central thesis is that packaging should be viewed as a tool to protect the "embedded" environmental resources of food.5 Among their many findings, they state, "Packaging plays an important role in protecting food from damage and contamination and extends the useful life of food items on the retail shelf and at home, thus potentially reducing wasted food and its environmental impacts." In assessing the relationship between food waste and GHG they concluded, "In general, the GHGE [Greenhouse Gas Emissions] associated with manufacturing food packaging is typically small relative to the emissions associated with producing and processing the food itself". 5

The report argues that for fresh produce, the "net environmental benefit" of packaging is high because produce is resource-intensive to grow but very easy to damage. For agricultural products with higher GHG emissions resulting from production such as meats, fish, and dairy products, the report notes that the environmental benefits of spoilage-preventing packaging is even more significant. In short, the most "sustainable" package is the one that ensures the food actually gets eaten. The Oregon DEQ report concludes that the most effective way to reduce the environmental footprint of our food system is prevention. Because packaging is a primary tool for prevention, "more" or "better" packaging is often the greenest option available.

Compliance with SB 54 regulations as currently drafted would require substantial and uncertain expenditures for research, testing, and piloting of alternative materials that

cannot provide equivalent performance in food safety and shelf life. Material cost data indicate that conventional PET clamshells cost approximately $0.08–$0.12 per unit, while recycled PET alternatives cost approximately $0.15–$0.20 per unit, an increase upwards of 150%, and compostable alternatives can cost $0.25–$0.35 per unit or more, an increased upwards of 338%. Similar price differentials for salad and baby carrot bags place significant incremental cost burdens on producers and consumers.

Multiple peer-reviewed life-cycle assessments (LCAs) demonstrate that plastic packaging frequently has a lower full life-cycle climate impact than alternative materials. In a comprehensive analysis across multiple applications, plastic packaging exhibited 10% to 90% lower greenhouse gas emissions than comparable non-plastic alternatives on a functional basis, driven primarily by lighter weight and lower production and transport energy requirements. More targeted LCA data show that polyethylene packaging typically requires 4–5 times less material than many alternatives and has roughly 50% lower life cycle GHG emissions, which is consistent with the weight-efficiency advantages of plastics in produce packaging applications such as clamshells, salad bags, and baby-carrot bags. Even where non-plastic recyclables like corrugated fiber perform well in certain impact categories, they can weigh up to 4 times more than plastic containers, substantially increasing freight emissions and transport costs.

2 The current industry analysis costs for a small to medium size business range from $150,000-$500,000 depending on the complexity of the packaging.
3 California Compost Coalition. “The SB 1383 Progress Report”, 2022. Available at: https://californiacompostcoalition.org/mobius/wp-content/uploads/2022/01/20-07-Newsletter-SB-1383- Progress-Report.pdf
4 The Little Hoover Commission. “Report #274: Reducing California’s Landfill Methane Emissions: SB 1383 Implementation”, 2023. Available at: https://lhc.ca.gov/wp-content/uploads/Reports/274/Report﷒274.pdf
5 State of Oregon Department of Environmental Quality (DEQ). "Food Product Environmental Footprint Literature Summary: Packaging and Wasted Food", 2017. Available at: https://www.oregon.gov/deq/FilterDocs/PEF-Packaging-FullReport.pdf

Response to O-33-4

Comment rejected. This entire comment, including its assignment of "adverse consequences" of the revision to section 18980.2(a)(2) regarding food waste, rests on the premise that the revisions narrow the scope of packaging entitled to be excluded from the definition of "covered material." However, as explained in response to comment B-3-1, that is not the case. The standard remains that it must be "not reasonably possible" to use alternatives to avoid the conflicts with federal requirements.

Furthermore, regarding the assertion that produce packaging "will be unable to meet the required recycling rates," that might justify exempting packaging from those requirements but is not a logical basis for excluding it from the Act altogether. The commenter's argument would render the Act effectively meaningless: not being able to comply with the law would justify it not applying,

so no packaging would ever need to satisfy its requirements, such as the recycling rate thresholds of Public Resources Code section 42050. Instead, the Act expressly contemplates situations where compliance is impossible and provides exemptions for them in Public Resources Code section 42060(a)(3) and (4). Crucially, because packaging exempted under section 42060(a)(3) or (4) is still "covered material," those exemptions accommodate the compliance difficulties the commenter highlights without diluting the Act's effects with respect to improving recycling in the state overall.
The remainder of this comment discusses broad environmental policy concepts without clearly explaining how they relate to section 18980.2(a)(2) specifically. The commenter appears generally to suggest that requiring produce packaging to comply with the Act would have a net negative environmental impact due to food waste. That impact, however, cannot directly support revising section 18980.2(a)(2), which concerns only whether packaging that avoids conflicts with federal requirements can be used. To the extent that, as the commenter asserts, those requirements may protect against that impact, section 18980.2(a)(2) does so as well by ensuring that the Act never requires violation of those requirements.

Comment O-33-5

CalRecycle Standardized Regulatory Impact Assessment (SRIA) Revision Required

The modifications to proposed § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated SRIA under California Government Code § 11346.3. Rather than minor technical adjustments suited for a 15-day comment period, these changes fundamentally alter the scope, burden, and accessibility of the categorical exclusion for food and agricultural commodity packaging.

Implementing these provisions will force agricultural businesses to engage legal experts to navigate intricate federal-state regulatory friction and commission packaging engineers to assess the viability of hypothetical alternatives. This constitutes a sharp escalation in compliance expenditures that the Department’s initial economic assessment failed to account for.

Response to O-33-5

Comment rejected for the reasons stated in the response to comment O-54-8.

Comment O-33-6

Section 18980.2.4 Does Not Provide a Feasible Alternative Pathway to Exempt Food Packaging Designed to Comply with Federal Laws, Rules, and Guidelines

The proposed regulations, as drafted, are economically infeasible and not practicably achievable for many covered entities, and the discretionary exemption pathway under 18980.2.4 fails to mitigate these fundamental challenges. Section 18980.2.4 presents challenges for Western Growers’ members that are as significant as, and in many

respects, more burdensome than those in the proposed categorical exclusion. The exemption process only provides a two-year reprieve from complying while still paying the highest fees. The language is permissive regarding how the Producer Responsibility Organization (PRO) evaluates applications and retains discretion over whether to advance the application to the Department. As written, there is little incentive for the PRO to meaningfully consider exemption applications. We believe the language should be changed from “may” to “shall”. While the language allows for the possibility to extend the exemption to five years, this pathway is administratively burdensome and costly: producers must prepare detailed applications demonstrating functional constraints, document lifecycle and material assessment data, and navigate discretionary approval and periodic renewal. Typical administrative costs per SKU are $21,000–$34,500, exclusive of material cost differentials, reporting, and compliance fees. For mid-size producers with multiple SKUs (clamshells, salad bags, baby-carrot bags), these costs could easily exceed $400,000– $700,000 solely to pursue exemptions.

Considering compounding issues such as higher material costs, increased transport and operational costs, food waste resulting in lost product, elevated life-cycle GHG emissions, and substantial administrative burden, the exemption pathway under Section 18980.2.4 does not provide a workable solution, particularly for small- and mid-sized producers.

Response to O-33-6

Comment rejected. No response to this comment is necessary because it raises criticism of the exemption process set forth in section 18980.2.4, which has not been revised in the 15-Day Changes. To the extent the commenter intended to suggest that the revisions in section 18980.2(a)(2) create a problem that must be addressed by revising section 18980.2.4, CalRecycle rejects that suggestion because the commenter's concerns over that section are unfounded. First, the application process for exemptions does not impose unreasonable burdens, and the commenter provides no explanation for its derivation of "costs per SKU" of pursuing exemptions. While exemption applications require greater detail than required of the notices described in section 18980.2(a)(2), nowhere does it require, as the commenter erroneously claims, "lifecycle and material assessment data." The information required for the application is not necessarily highly technical and is readily available to those with knowledge of the packaging at issue and the relevant compliance challenges, and renewing exemptions is highly streamlined, requiring only a certification letter unless the original justification for the exemption no longer is valid. Moreover, section 18980.2.7 greatly reduces, and in many cases may eliminate, the burdensomeness of procuring exemptions. Under that section, CalRecycle can deem exemptions applicable to entire classes of packaging or products.
Regarding the assertion that producers will be required to pay "the highest fees," no revision to section 18980.2.4 is necessary because such a claim is speculative, and the Act does not give CalRecycle authority to excuse producers from funding obligations or to set fee levels directly.

Regarding the change the commenter recommends, the commenter does not point to the specific text at issue, but CalRecycle interprets it as a request that the PRO be required to submit to CalRecycle all exemption applications it receives from producers. CalRecycle declines to make that change for the reasons stated in response to comments O-81-3 and O-63-6 (submitted in response to the 45-Day Changes).

Comment O-33-7

Rather than attempting to meet a burdensome standard that carries significant economic and legal risks, **the foreseeable outcome will be the withdrawal of affected fresh produce and meat products from the California market**. This outcome would undermine food access and environmental objectives. Sadly, it will make unavailable whole categories of convenient and nutrient-rich produce products to Californian families.

Fresh produce packaging accounts for less than 3.27%6 of the estimated total Covered Material Category (CMC) proportion of California's statewide disposal.7 To address this small percentage, CalRecycle's proposed regulations impose astronomical costs on the state's agricultural industry. CalRecycle's Revised Standardized Regulatory Impact Assessment (SRIA) published June 2025, states that the average "large producer", which is any producer that makes a penny more than one million dollars in gross income, that the average annual SB 54 regulatory cost for compliance is $406,504.8 Without adjusting federal and state taxes, a business could pay 40.7% of its gross annual income to comply with one regulation. The proposed exclusion processes add significantly to this regulatory and financial burden, which is not warranted by the scope of the issue and not necessary to satisfy the purpose and intent of SB 54.

6 CalRecycle. "What's in California Landfills: Measuring Single-use Packaging and Plastic Food Service Ware Disposed (2025) Final Findings". 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Publications/137559. CMC report data included in our calculation: CMC 24_P36P (1.62%), 24_P16P (0.73%), 24_P38P (0.51%), 24_P46P (0.15%), 24_P10P (0.12%), 24_P22P (0.08%), 24_P45P (0.04%), and 24_P5P (0.02%). Noting, these CMC's include packaging that are not used by the agricultural industry; therefore, agriculture's packaging is less than 3.27%. For example, CalRecycle states that 24_P16P total estimated proportion of total statewide disposal of 0.73% includes bread bags, candy wrappers, and citrus mesh bags.
7 CalRecycle. "What's in California Landfills: Measuring Single-use Packaging and Plastic Food Service Ware Disposed (2025) Final Findings. 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Publications/137559
8 CalRecycle. "Proposed Regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act Standardized Regulatory Impact Assessment (SRIA)", 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Web/131172

Response to O-33-7

Comment rejected. This comment is a continuation of previous comments and predicts certain marketplace consequences of the proposed regulation, without adding objections or recommended regulatory changes to those already stated in earlier comments. CalRecycle therefore rejects this comment for the reasons stated in response to comments O-33-2 through O-33-6.

CalRecycle also rejects this comment to the extent it asserts that consideration of the cost of complying with the Act's mandates are directly relevant to whether Public Resources Code section 42060(b) justifies excluding packaging from the Act altogether. Section 42060(b) concerns whether the Act imposes requirements that conflict with federal requirements, not the financial impact of the Act's requirements. Furthermore, the comment improperly relies on the average compliance cost reported in the Revised Standardized Regulatory Impact Assessment (SRIA) to make the assertion that a business might pay "40.7% of its gross annual income" to comply with the proposed regulations. That is a misleading application of the underlying arithmetic. It posits the extreme scenario that the smallest entity subject to the Act might incur the average compliance cost reported in the SRIA, even though that average accounts for costs incurred by all entities, including those of massive scale.

Comment O-33-8

In conclusion, we align with and support the other agricultural coalition letters as well as the letter submitted by Abby Taylor Silva at Kahn, Sores, and Conway, and hereby incorporate and reaffirm its contents in full and reiterate the following:

“The categorical exclusion provisions in proposed § 18980.2(a)(2) must be substantially revised to comply with multiple statutory requirements that govern California rulemaking.

First, the regulations must align with PRC § 41821.5(c)'s requirement for "reasonable and necessary" implementation practices that do not impose unreasonable burdens, and with California Government Code § 11349.1(c) and (d)'s requirements for clarity and consistency with enabling legislation. The Department has exceeded its statutory authority by inserting the "mandatory" qualifier throughout proposed § 18980.2(a)(2), as PRC § 42060(b)(2) does not limit the categorical exclusion to "mandatory" federal requirements. Instead, it broadly references "regulations, rules, or guidelines" that create conflicts. This unauthorized narrowing must be corrected to reflect the statute's actual language and the Legislature's intent to provide a workable exclusion for packaging subject to federal food safety requirements.

Second, the extensive revisions to § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated Standardized Regulatory Impact Assessment (SRIA) under California Government Code § 11346.3. The dramatic increase in compliance costs, including the necessity for agricultural producers to retain

legal counsel and packaging engineers to navigate the regulation's impossible evidentiary burdens, was not contemplated in the Department's original economic analysis and must be quantified to identify the least burdensome regulatory alternative as required by statute.

Third, the current draft fails California Government Code § 11349(c)'s requirement that regulations be written "so that the meaning of regulations will be easily understood by those persons directly affected by them," particularly with respect to the undefined terms "all applicable mandatory standards," "any law," and the conflicting standards of "reasonably possible" versus "not possible." The Department must substantially revise proposed § 18980.2(a)(2)(B) to provide clear definitions of key terms, explicit criteria for determining what constitutes sufficient evidence, and objective standards that will allow regulated entities to understand their obligations and the Department to apply the regulation consistently.

Finally, all regulatory amendments must align with California Government Code § 11346.3's requirement that regulations be technically feasible and PRC § 41821.5(c)'s mandate to consider compliance costs and technical feasibility. The Department must therefore reincorporate "reasonably possible" consistently throughout § 18980.2(a)(2), ensuring internal consistency with the parent statutory provision and alignment with governing statutory requirements for feasibility and practicability, rather than imposing an absolute impossibility standard that no regulated entity can meet..."

Response to O-33-8

Comment rejected. This comment is a duplication of comment O-54-19. CalRecycle's response to that comment therefore applies to this one as well.

Comment O-33-9

Western Growers and the organizations below respectfully urge CalRecycle to revise the proposed Section 18980.2(a)(2), reverting to the August 22, 2025, draft regulatory text as the baseline and restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

We appreciate your continued engagement in this issue and are happy to provide any additional information that would be helpful.

Sincerely,
Gail Delihant
Senior Director, California Government Affairs
Western Growers Association

On behalf of the following organizations:

Agricultural Council of California, Emily Rooney

California Cattlemen’s Association, Kirk Wilbur
California Fresh Fruit Association, Daniel Hartwig
California Strawberry Commission, Rick Tomlinson
California Tomato Growers Association, Mike Montna
California Women for Agriculture, Lora K. Daniels
Grower-Shipper Association of Central California, Christopher Valadez

Response to O-33-9

Comment rejected. No response to this portion of the commenter's submission is necessary because it only summarizes the objections and recommendations already presented in comments O-33-1 through O-33-8, to which CalRecycle has responded individually.

O-34: Upstream (Sydney Harris)

Comment O-34-1

February 13, 2026
California Department of Resource Recycling & Recovery
SB 54 Regulation Implementation Team
1001 I Street
Sacramento, CA 95814

Subject: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act -Updated Formal Proposed Regulations

Dear Director Heller and SB 54 team,

Thank you for the opportunity to submit comments again on behalf of Upstream on the updated formal proposed regulations for SB 54. Upstream is an environmental non-profit and leading change agency for the reuse movement in the US and Canada. We spark innovative solutions to waste and forge strategic alliances to help people, businesses, and communitiesshift from single-use to reuse. We strongly support packaging EPR as a catalyst for reuse systems and appreciate CalRecycle’s continued efforts to craft rules for this program that support reuse.

We are writing to express our **strong support for the narrowing down of categorically exempt materials** under Article 2, Section 18980.2. All exemptions to packaging EPR programs create free riders in the recycling system, adding costs for non-exempt producers and generating contamination and confusion. The updated regulations limit the scope of products eligible for categorical exemption and appropriately place the burden of proof for such eligibility on the producers seeking it. Since it is clear from the public comments received to date that CalRecycle will receive a large number of exemption requests, **we do strongly recommend ensuring the**

agency brings a sufficient number of food safety industry experts on staff to review requests with a critical lens.

Thank you for your consideration; please do not hesitate to contact us with any questions at sydney@upstreamsolutions.org.

Sincerely,
Sydney Harris
Policy Director, Upstream

Response to O-34-1

Comment rejected. No response is required because the comment does not suggest changes to the proposed regulations or raise objections related to the rulemaking process.

O-35: California Manufacturers and Technology Association (Elizabeth Esquivel)

Comment O-35-1

E*lectronic Submission via SB 54 Regulation Portal*
February 13, 2026
Csilla Richmond
CalRecycle, Regulations Unit
1001 I Street, MS-24B
Sacramento, CA 95814
RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations
Dear Csilla Richmond:
On behalf of the California Manufacturers & Technology Association ("CMTA"), we appreciate the opportunity to provide these comments regarding the Department of Resources Recycling and Recovery's ("CalRecycle" or "Department") proposed revisions to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations ("Regulation").
CMTA is a trade association representing California's 30,000 manufacturing, processing, and technology-based companies, including many covered material manufacturers and the producers who use those materials in the marketplace. CMTA and its members are committed to advancing sustainability and producer responsibility across product design, manufacturing, marketing, and end-of-life management, and therefore have a strong interest in ensuring SB 54 is implemented in a clear, workable, and cost-effective manner.
Implementing a circular economy is inherently complex. Manufacturers operate at the intersection of raw materials, product design, and consumer use, and while they play a critical role in advancing material innovation and recovery, system outcomes are also shaped by infrastructure and consumer participation. For SB 54 to succeed, regulatory requirements must align with real-world market conditions and operational realities.

Last year, CMTA noted its full support for Governor Newsom's direction to CalRecycle that the Regulation "ensure California's bold recycling law can achieve its goal of cutting plastic pollution and is implemented fairly — minimizing costs for…working families as much as possible." We recognize the progress the Department has made with the Regulation; however, significant issues regarding clarity, workability, and cost remain as hurdles to achieving the Governor's vision for cost-effective SB 54 implementation for California consumers.

Response to O-35-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-35-2

Article 2. Section 18980.2. Categorically Excluded Materials

One of the specific provisions to address food safety and cost impacts associated with food and agricultural products is the categorical exclusion language for packaging and products that are regulated by other state and federal laws, regulations and programs. The complexities that often accompany these packaging materials was discussed at length during negotiations on the statutory provisions as was the real potential for duplicative, overlapping, and conflicting regulation for packaging materials for products that have critical health, safety and other beneficial uses.

CMTA is highly concerned with the latest revisions to the language regarding exclusions for packaging used in the agricultural and food product sector. The revisions only allow for an exclusion from being deemed a covered material to the extent that the exclusion is based on a mandatory provision of the various federal and state laws and regulations governing food and agricultural product safety. Notably, federal agencies, programs and laws do not explicitly mandate any specific type of packaging material be used for food safety. Rather, they provide clear standards and requirements for safety and food handling, along with packaging review and approval to ensure the materials meet those standards and requirements.

Unfortunately, the latest revisions to this section will make it impossible to apply and be granted any exclusion for packaging materials specifically used for food safety. Guidelines, while the industry standard and approved by federal agencies, are not mandatory provisions that explicitly dictate what packaging material and form must be used. The federal agencies do not have such requirements in deference to decisions based on federal guidelines made by producers as to what material is best to ensure public health is maintained.

Response to O-35-2

Comment rejected. The commenter mischaracterizes section 18980.2(a)(2) as requiring "federal regulations, rules, or guidelines" to "explicitly mandate [a] specific type of packaging material be used for food safety" to be considered "mandatory." Nothing in section 18980.2(a)(2) requires that interpretation, which ignores the plain meaning of "mandatory." That term is a synonym for "required." In context, therefore, it unambiguously means that the regulation, rule, or

guideline is not merely voluntary but rather imposes a requirement that, if not met, is a violation of federal law. The commenter repeatedly acknowledges that federal laws impose "requirements." Accordingly, no change to section 18980.2(a)(2) is necessary to accommodate the commenter's concern that the revisions render it is impossible to apply or foreclose the exclusion it describes. See, also, CalRecycle's response to comment B-3-1, which raises concerns substantively similar to those raised in this comment

Comment O-35-3

Food Service Ware (18980.1(a)(8))

Clarity in this definition is critical because it determines producer obligation, reporting responsibility, and compliance risk across a wide range of products and sectors. The regulatory definition of “Food service ware” remains unclear and will prompt some producers not to report sales if there is a lack of clarity on which items are covered materials. By referring to the food service ware items as a “good” rather than a type of packaging associated with direct food contact, the definition removes the party filling/using the “food service ware” as the producer in subsection (A). However, the definition under subsection (B) refers to where the covered materials listed are used, which may obligate the party filling/using the food service ware. This approach creates ambiguity and inconsistency across covered materials and their obligated producer.

Plastic Definition and De Minimis Threshold (18980.1(a)(15); 18980.2.2(b))

CMTA remains concerned about the definition of “plastic” under the regulations and the absence of a clear and workable “de minimis” threshold. The current regulatory definition of “plastic” is overly broad and does not reflect how materials are recovered or how they move through the recycling system. By including traditional plastics as well as coatings, adhesives, and similar trace elements, the definition creates significant challenges for compliance and certification—particularly for fiber-based materials—and complicates producers’ ability to accurately identify, separate, and report plastic content. The draft regulations further extend this definition to any component partially or fully made of plastic unless contamination can be proven, increasing producer responsibility and creating a high likelihood that many fiber and paper products, including paper packaging and food service ware, will be erroneously classified as containing plastic. Guidance to date indicates that fiber-based food service ware may be treated as containing plastic under the SB 54 definition.

CMTA continues to recommend inclusion of a de minimis threshold based on the percentage of the weight of the product or packaging to clarify what qualifies as “made partially of plastic” and to align covered material definitions with real-world end markets and recovery pathways. While Section 18980.2.2(b) recognizes that material of de minimis weight or volume is not itself packaging, additional clarity is necessary to ensure consistent application.

To move beyond describing the problem and toward a workable, auditable approach, CMTA recommends the Department adopt a clear, by-weight de minimis threshold—specifically, a 10 percent standard for trace components such as inks, adhesives, coatings, and similar elements across material types. These components should be deemed de minimis and therefore excluded from reporting and source reduction

requirements. Establishing this standard would improve regulatory certainty, ensure consistent compliance expectations, and prevent fiber-based packaging and food service ware from being misclassified.

Failure to include an adequate and clearly defined de minimis value could impede the sortation, aggregation, and processing of fiber-based covered materials into commodity bales and instead result in increased landfilling. Aligning with established industry approaches and adopting a defined by-weight threshold will provide regulatory certainty and improve implementation.

Compostable Packaging Framework (18980.3.3)

The compostable packaging framework should account for ongoing innovation in composting technologies as well as infrastructure limitations. Limiting compostable materials to allowable agricultural organic inputs under the requirements of the United States Department of Agriculture National Organic Program excludes compostable polymers that meet ASTM D6400 or ASTM D6868 standards and are accepted at industrial composting facilities throughout the country and in parts of California.

This unnecessarily narrows the definition and undermines market innovation in the composting space. The reference to the National Organic Program, combined with the overly broad definition of “plastic,” creates an unworkable limitation for many materials. This approach could result in the elimination of paper-based food service ware as compostable materials, particularly where fiber products are presumed to contain plastic under the SB 54 definition. Eliminating composting as an end-of-life option for food service ware risks reducing the collection of food waste overall, contrary to both the language and intent of SB 54.

CMTA recommends a framework that recognizes ASTM-certified compostable materials and real-world acceptance at industrial composting facilities, while allowing flexibility for innovation and evolving infrastructure capacity.

Responsible End Market (REM) Criteria (18980.4)

With respect to subsection (a)(3), markets for recycled materials are complex and continually evolving, offering various incentives for end markets to manage incompatible materials. Requiring entities to send incompatible materials for further processing assumes cost-effective methods of collection, sorting, and transportation, which may not always be possible or environmentally preferable.

This provision should be amended to include flexibility, allowing end markets to assess environmental impacts and opt for alternatives if sending materials for further processing would be detrimental. Additional clarity is also needed regarding which materials qualify as “incompatible materials,” and how and by whom such determinations will be made.

With respect to “items partially or wholly constituting plastic,” the proposed regulations continue to rely on the undefined term “biologically decomposed” and appear to require full conversion, which may not be technically feasible. An alternative approach would be to allow demonstration and evidence that composted covered materials are processed into final marketable compost as proof of a responsible end market for recycled organic product, similar to the approach used for items comprised of fiber or paper substrates. We recommend CalRecycle to clarify incompatible materials criteria and allow environmental impact–based determinations by end markets.

Outstanding Issue of Concern – Inconsistency of CMC List Amid SB 343

CMTA is concerned about the provisions of SB 343 that guide what is included on the Covered Material Categories (CMC) list for recyclability. Commodity markets and access conditions shift frequently, creating the risk that materials move on and off the list despite producer investments to improve recycling performance. This volatility is disruptive and undermines long-term planning and infrastructure investment.
To provide stability while maintaining accountability, CMTA recommends that CalRecycle adopt a defined performance framework using a 12-month rolling average with a 60 percent threshold for access and acceptance. This approach would smooth short-term fluctuations, support infrastructure investment, and ensure recyclability determinations reflect sustained market performance rather than temporary swings.
Outstanding Issue of Concern – Ambiguity of Source Reduction Requirements
CMTA remains concerned about ambiguity regarding source reduction requirements and impacts on market growth, particularly whether inks, adhesives, and minor coatings are intended to be included in reporting and compliance obligations. Across many substrates, these trace components do not materially influence recyclability, may be removed or rendered inert in established processing systems, and cannot realistically be reduced without compromising product performance, food safety, or product integrity.
Consistent with CMTA's recommendation above regarding a de minimis threshold, these elements should be excluded from source-reduction reporting and compliance requirements. CalRecycle should explicitly clarify that trace components such as inks, adhesives, and minor coatings are treated as de minimis for purposes of source reduction to prevent unintended impacts on fiber-based packaging and food service ware while maintaining focus on meaningful material reduction.
Clarifying definitions, establishing a workable de minimis threshold, and aligning composting and REM standards with real-world infrastructure will be essential to successful implementation of SB 54. CMTA appreciates the opportunity to provide these comments and feedback. If you would like to discuss these issues further, please feel free to reach out to me at (916) 498-3320 or eesquivel@cmta.net or our consultant Dawn Koepke with McHugh Koepke Padron Government Relations at (916) 606-5309 or dkoepke@mchughgr.com.
Sincerely,
Elizabeth Esquivel
Vice President of Government Relations
California Manufacturers and Technology Association

Response to O-35-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-36: Surfrider Foundation (Miho Ligare)

Comment O-36-1

February 13, 2026

California Department of Resources and Recycling ("CalRecycle")
SB 54 Regulation Implementation Team
Packing EPR Section Regulations Unit
Legal Affairs Office

Submitted via CalRecycle Public Comment Form

Subject: SB 54: Plastic Pollution Prevention and Packaging Producer Responsibility
Act - SB 54 Proposed Amendments, 15- Day Changes Comments

Dear CalRecycle Staff,

The Surfrider Foundation ("Surfrider") is a national non-profit organization dedicated to the protection and enjoyment of the world's ocean, waves, and beaches for all people through a powerful network of activists. Surfrider Foundation works to eliminate the impacts of plastics on the environment and communities by advocating for a reduction in single-use plastics.

Overall, the successful implementation of the Plastic Pollution Prevention & Packaging Producer Responsibility Act (SB 54) hinges on CalRecycle maintaining strong oversight of the Producer Responsibility Organization and the implementation process. Processes must be clearly laid out and transparent, including data collection, and true and effective source reduction must be prioritized by cultivating robust, equitable reuse and refill systems, all while centering and prioritizing environmental justice and tribal voices.

Many of Surfrider's previous comments throughout the rulemaking process still have yet to be adequately addressed in this round of updated regulations. It is imperative to finalize the strongest set of regulations that lay out a clear framework for meeting the objectives in statute.

In this vein, we are reinforcing the following comments:

• Article II – Covered Material and Covered Material Categories
• Article IV: Responsible End Markets
• Ensuring Effective Allocation of Mitigation Fund
• Effective Enforcement of Statewide EPS Foodware Prohibition

Response to O-36-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-36-2

Article II – Covered Material and Covered Material Categories

Categorically Excluded Materials (§18980.2): Must Drastically Narrow Scope and Include Mandatory Sunset

We appreciate the additional clarifications around the criteria, notice process, and other updated sections to help narrow the exclusions from "covered material". We understand that the intent for categorical exclusions is to only apply to materials that are not "reasonably possible" to transition to a compliant material due to unique challenges that are in conflict with federal law. We also support the changes in section (a)(2)(B), outlining the showing that entities must make if they are seeking exclusions from "covered material" on the grounds that there is a conflict with federal law.

However, we are concerned that the categorical exclusion framework in Section 18980.2 is overly broad and could exempt large portions of food packaging. Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2-5 years, while excluded materials are permanently removed from the law's purview.

Should such a conflict arise, producers can utilize the exemption pathway within subparagraph (4) of section 18980.2.4 Exemptions for Certain Covered Materials for (A) unique challenges,(C) health and safety reasons, or (D) materials determined unsafe to recycle.

We recommend CalRecycle to remove section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

If this is not possible, Surfrider recommends that under 19890.2 (a)(2)(D), packaging or packaging component shall be deemed as a covered material until the Department makes a determination rather than the current regulations that notices of exclusion apply by default (Section 18980.2(a)(2)(D)), with CalRecycle's optional ability to request additional information (Section 18980.2(a)(2)(E)). The current regulations open a loophole with automatic exclusions of 8 months or more for all notices, even those that ultimately fail.

As it currently stands, covered material status suspension begins with the uploading of complete exclusion notices to the database (subparagraph (D)), continues during CalRecycle's request for additional information (no time limit), during its notification of insufficient information for a determination (with a 60-day response window from the producer), and 180 days after CalRecycle's determination that the notice fails to demonstrate qualification after additional information (subparagraph (E)). This timeline is excessively long and could encourage the submission of exclusion notices to delay compliance, undermining the effectiveness of SB 54 as a whole.

Surfrider recommends an authorization process rather than a notification process for the granting of exclusions and to update 19890.2 (a)(2)(D) to "Packaging or packaging components shall be deemed as a covered material until the Department makes a determination..." This would keep materials targeted by categorical exclusion applications as covered material unless and until a positive exclusion determination is issued by CalRecycle.

Furthermore, we urge that categorically excluded materials have a prescribed sunset of two years. When exclusions are granted, they should also be time-bound. Packaging design and recyclability are shifting rapidly as a result of SB 54. As such, materials excluded under section 18980.2(a)(2) should be limited to 2 years and require department review, just as exemptions are (18980.2.4(g)) and a phase-in plan or rationale for why a phase-in plan is not feasible should be required, similar to section 18980.2.4(c)(4)(A)viii for exemptions.

Without these changes, the categorical exclusion risk creates a loophole large enough to undercut the recyclability and source reduction objectives at the heart of SB 54. With such a wide swath of categorically excluded materials, it seems like the PRO will be set up to fail, as it will be underfunded, and there will be an unfair burden on those participating in the PRO. This also means that it would be harder to meet source reduction targets, as there are fewer producers. Finally, it will also have ripple effects on creating equitable refill and reuse systems, as there will be fewer incentives and funding from the PRO to transition from disposable packaging to refill.

Response to O-36-2

Comment rejected. The commenter contends that section 18980.2(a)(2) is overly broad and should be removed in favor of relying exclusively on the exemption process in section 18980.2.4. Section 18980.2 implements Public Resources Code (PRC) section 42060(b), which expressly addresses circumstances in which compliance with SB 54 would conflict with federal law. The commenter's proposal would effectively collapse the statutory directive in PRC section 42060(b) into the exemption provisions of PRC section 42060(a)(3) and (4). If the exemptions authorized under PRC section 42060(a)(3) and (4) were sufficient to address conflicts with federal law, PRC section 42060(b) would serve no independent function. CalRecycle also rejects this comment for the reasons stated in response comment I-19-1 (submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it.

Regarding the commenter's recommendation to convert the notification process into an authorization process and impose a two-year sunset on categorical exclusions, CalRecycle rejects that proposal for the reasons stated in response to comment O-25-2.

Comment O-36-3

Previously Submitted Comments that Have Not Been Addressed

Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1): Additional Clarity Needed

Source reduction through refill and reuse systems should be prioritized as they are the most effective ways of reducing plastic pollution.

We appreciate CalRecycle's approach to allowing for innovation and room to grow for refill and reuse systems. However, we have concerns that the ***Exclusion of Reusable and Refillable Packaging and Food Service Ware (§18980.2.1)*** may be too lax, and additional clarity is needed. The current regulations allow for more opportunities for disingenuous "reuse" designed to skirt the fees and recyclability requirements of the law. To allow for only truly refillable or reusable packaging, we recommend CalRecycle:

• Adopt stricter, performance-based definitions for reusable packaging, informed by lifecycle data and enforcement capacity.

• For consumer good packaging, producers should be required to submit verified reuse/refill take-back data as a condition of maintaining reuse/refill status. The PRO plan should also identify a clear strategy for quantifying the amount of reusable and refillable packaging that is actually reused, as well as outlining steps that the PRO is implementing to maximize these numbers (including through deposits or other incentives).

• Packaging cannot be considered reusable if it doesn't get collected and reused, which should be backed by verifiable data and proper and clear labeling.

• Establish a process for adopting third-party certification requirements when they become available.

Exemptions for Certain Covered Materials (§18980.2.4): The Exemption Application process must include public deliberation and be a public record

The proposed exemption process for packaging based on "unique challenges for compliance" doesn't have any requirement that decisions be made in an open forum with input from the public. Despite subsection (d) of 18980.2.4 proclaiming that applications are "public documents subject to mandatory disclosure under the California Public Records Act," there is no mandated transparency in the regulations, and it is instead reliant on the public requesting data. Given the wide range of possible applications, **it is imperative that any proposed exemption only be granted with public input and that adoption of any exemptions should become a part of the public record.**

Article IV: Responsible End Markets

End Market Identification (§18980.4.1): Provisions around recycling technologies are dangerous, inconsistent with statutory requirements, and devastatingly lenient

The focus on management of waste through permits and the production of "significant quantity of hazardous waste" in Section 18980.4.1(d)(1) and Section 18980.4.1 (d)(B) as to the generation of waste, which is in statute, is a significant shift away and opens the door for chemical recycling, and is problematic. SB54 language refers to the <u>amount</u> of hazardous waste, not the "<u>risk</u>" associated with it, and these are clearly different standards. The proposed regulatory framework in this regard is also clearly and critically at odds with the SB 54 statute.

We would like to see alignment with the statute and regulations in the form of a categorical prohibition on chemical recycling technologies, as envisioned in SB

54's requirement that CalRecycle "exclude plastic recycling technologies that produce significant amounts of hazardous waste."
Furthermore, the regulations reference the federal definition of hazardous waste, and not the California state definition, which is far more protective of public health and the environment. Use of the weaker federal definition problematically opens the door to the generation of hazardous wastes that are not considered federally hazardous but should otherwise be considered 'California Hazardous.' This includes more protective toxicity tests, lower thresholds for heavy metals (e.g., lead, copper, zinc), lower thresholds for ignitability, lower thresholds for reactivity and corrosion, and prohibitions on certain chemical products and pharmaceuticals.
CalRecycle should reference and cite the chemical recycling technologies identified in Senator Allen's Letter to the Journal and respective committee analyses, including solvolysis, solvent-based technologies, pyrolysis, incineration, and gasification.
Chemical recycling and related technologies are ultimately a form of burning plastic and harm our communities and the environment. Uncontrolled pollution from these processes poses significant health and safety risks for local populations, placing a heavy toxic burden on workers and surrounding communities, the majority of which are low-income and communities of color.,
Statutory construction of the definition of "recycling" in PRC § 42041 (aa) allows for arguments on both sides, but **the strongest arguments rely on the Legislature's intent to exclude chemical recycling from the definition of "recycling."** The legislative history, as evidenced by discussions of the harmful effects of chemical recycling in committee reports shows the Legislature did not intend for producers to use chemical recycling processes to comply with SB 54's recycling targets.
Ensuring Effective Allocation of Mitigation Funds
Overall, there are concerns about the mitigation funds, the process, and how to ensure that the funding will go to the communities most burdened by plastic pollution. Although the mitigation funds will be allocated through the legislative budget process and are not addressed in the draft regulations, **it is critical to ensure environmental justice and tribal representation throughout the SB 54 implementation process and establish a clear process and understanding of how the mitigation funds will be allocated.**
We encourage CalRecycle to hold public workshops throughout the state on this topic and dedicate a webpage to helping the public understand the mitigation fund, timeline, and process to access funding.
Please also explain how CalRecycle plans to work with other State agencies, including the California Department of Finance, to maximize coordination and positive impact on disadvantaged communities, and minimize barriers in the grant-making process to marginalized communities.
Effective Enforcement of Statewide EPS Foodware Prohibition
Due to EPS's negative impact on our communities, human health, and environment, EPS food service ware has a different timeline and recycling rates outlined in the statute (Section 42057(i)), compared to other covered materials categories in the statute.
We appreciate CalRecycle's work to create a webpage and send out notices with additional information to EPS producers. However, the draft regulatory text is still too vague. We would like to see CalRecycle provide more enforcement beyond education and assistance.

We would also like to see more transparency regarding how and who CalRecycle is reaching out to and providing compliance support. For example, what is happening with CalRecycle's online notification portal?
Furthermore, producers who are unable to demonstrate to the department that the polystyrene recycling rate is met on January 1, 2025 should not have the opportunity to come back in the future attempting to show that they meet the target recycling rate.
There is concern that there will be an increased focus on the "recycling" of EPS at the cost of communities and the environment. Some facilities process EPS using chemical recycling methods, but as stated in past comments, **chemical recycling and related technologies should not be counted as recycling.**
We look forward to staying engaged in this important process and appreciate the staff's dedication and hard work to review and incorporate comments.
Thank you for your consideration.
Sincerely,
Miho Ligare
Senior Manager, Plastic Pollution Initiative
Surfrider Foundation

Response to O-36-3

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process. The commenter's proposal regarding CalRecycle staffing is not a proposal concerning the proposed regulations.

O-37: CJ Biomaterials (Lauren Scott)

Comment O-37-1

February 13, 2026

< Submitted via public comment portal >

TO: CalRecycle, Packaging Unit

RE: CJ Biomaterials Public Comments on SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations (15-day changes)

On behalf of CJ Biomaterials, thank you for the opportunity to provide comments on the proposed regulations issued on January 29, 2026. Our comments center around the provisions that impact compostable covered materials, including both home and industrial compostable products.

CJ Biomaterials is a division of CJ Group, a global lifestyle company with a strong footprint across the United States. CJ Group is the world's leading supplier of fermentation-based bioproducts for animal nutrition, human nutrition, and biomaterials

at its 13 manufacturing facilities worldwide. Leveraging this fermentation process and expertise, CJ Biomaterials is focused on delivering meaningful solutions to the global problem of plastic waste and other sustainability challenges at scale.

Specifically, CJ Biomaterials is working to develop and expand the use of biopolymers to help create a more sustainable future. Our focus is on a specific type of biopolymer called polyhydroxyalkanoates (PHAs). PHAs are a biopolymer that can serve as an alternative to traditional plastics for use in food serviceware, flexible film packaging, and in other products and packaging used for collection and diversion of organics from landfills.

Response to O-37-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-37-2

Article 2- Covered Material and Covered Material Categories

We believe the language in § 18980.2(a)(2) provides a clear and transparent pathway for entities to pursue exemptions if they believe that compliance with the regulations will not be feasible in a specific covered material category. We support the outlined plan to establish a public database that contains a list of each exemption granted by the Department. This will help accelerate innovation targeted at these categories and applications in which no suitable existing material exists.

Response to O-37-2

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-37-3

Article 2- § 18980.2.1 Exclusion of Reusable and Refillable Packaging and Food Service Ware.

The regulatory text proposed establishes a blanket exemption for reusable and refillable products. At the same time, the proposal removes all meaningful parameters around the definition and marketing of reusable and refillable products. This will allow for a host of bad actors to circumvent the program and legal requirements by claiming their product is reusable or refillable. Additionally if these products are not included within the scope of covered materials, the PRO will be unable to gather data and have producers report on key metrics including production data, end of life disposal, and costs associated with their use. We ask the Department to include these products within the regulatory framework in order to manage the broader packaging ecosystem and ensure unintended consequences associated with shifting materials are avoided.

Article 2- §18980.2.5(a) Covered Material Category List Updates

SB 54 is designed to provide a pathway for products to be recycled or composted. To help establish this pathway, PRC 42061(d) directs CalRecycle to create a list of covered material categories that are deemed compostable. We appreciate the alignment of these determinations to the statutory eligibility to be labeled and sold in the state as 'compostable'.

We do not support the new language that reduces the frequency of these updates. The statutory language states that 'the department shall update the list at least annually'. We ask that the Department amend the regulatory text to provide for CMC list updates no less than once every 12 months and also to specify updates should be done on an *ad hoc b*asis, as needed to reflect the statutory requirements behind the CMC list determinations.

Article 3-Section 18980.3.3. Eligibility for Being Labeled "Compostable"

We support 18980.3.3(b)(5)(A) as drafted and appreciate the Department's removal of repetitive and problematic language around the definition of 'desirable organic waste'.

Article 4- Responsible End Market Criteria - § 18980.4(a)(4)(B) and § 18980.4(a)(4)(C)

Consistent with our previous comments, we are concerned that the statutory language around Responsible End Markets (REMs) for compostable covered products will lead to implementation challenges. These provisions fail to recognize the overs generated in the industrial composting process. These overs are typical byproducts of composting and are materials that are typically sent to landfill. Overs are simply part of the process, and may include compostable products, food waste, other organic matter, and contaminants like traditional plastic products that end up in the compost pile.

Rather than revise the regulatory criteria around REMs to reflect the overs generated by the composting process, the Department is proposing to establish a separate carve-out for a subset of certified compostable products based on their material composition. The language in §18980.4(a)(4)(B) explicitly restricts an entity processing certified compostable covered products from disposing of any material, thereby disallowing any overs generation. Then, the language in § 18980.4(a)(4)(C) establishes a specific exemption from this requirement for compostable products that are made of paper and fiber only.

This differentiation between plastic and fiber/paper compostable products is not aligned with the intent of SB 54 which is to ensure that all certified compostable products, regardless of material type, are recovered and composted rather than landfilled. To this

end, all covered compostable products should be held to the same REM requirements. Certified compostable products, both fiber/paper and plastic or fiber/paper products containing plastic, are designed and tested to completely biodegrade in an industrial composting system. They are processed together and in the same manner and should be held to the same requirements. Furthermore, it would be infeasible for a composter to determine which overs contain plastic versus nonplastic products, especially in the case of fiber products that contain plastic binding agents or coatings.

We ask the Department to revise the language in §18980.4(a)(4)(B) to reflect a consistent approach and application of the Responsible End Market (REM) criteria across material types for compostable covered products:

(B) For items partially or wholly constituting plastic, any covered material or intentionally included in the process used to generate a recycled organic product must fully biologically decompose and be processed in a manner consistent with the management of other feedstocks to produce a marketable product which complies with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable. ~~The entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material and derivative material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).~~

Article 3- Documentation Requirements for Fiber Exemption

Compostable covered products that contain no plastics or polymers are able to secure an exemption from third-party certification requirements for compostability. The previous regulations appropriately established a series of requirements for these products seeking to obtain an exemption from third-party certification.

Fiber-based compostable packaging is likely to contain a variety of other materials beyond fiber in order to meet the needed performance requirements in many applications. These materials may include polymers, to act as binding agents and coatings, as well as inks, adhesives and dyes. By undergoing third party certification and testing, we can ensure the safety and performance of these products. The risk of allowing a blanket exemption for products that are asserting a fiber exemption is that consumers may be exposed to hazardous chemicals and PFAS without the guard rails established by making products undergo the certification and testing process. The earlier regulations established a requirement that any products undergo the third-party certification process and testing to ensure they are safe for use, or that manufacturers

fully disclose the ingredients used in the manufacturing process and conduct laboratory testing to verify their claim that the product is made from exclusively fiber and contains no plastic.

We ask the Department to add back in the testing and ingredient disclosure requirements outlined in the previous regulatory proposal.

Article 6- §18980.6.7 - Ecomodulated Fee and Fee Schedule

We request revision to §18980.6.7(a) and (b), allowing the PRO a two- year delay in implementing ecomodulated fees credits for plastics made from renewable materials.. Ecomodulated fees are an important mechanism to help new, more climate friendly products become more cost competitive. They are a core principle behind EPR and help facilitate a shift to more sustainable products.

There does not appear to be any statutory basis for this two-year delay in setting eco-modulated fee rates in §42053. We request that the PRO set eco-modulated fee reductions for renewable plastic covered materials at the same time as they release the initial program plan rather than delaying these provisions out alongside the base fee setting. Two years is an eternity for a new industry that needs the support of ecomodulated fees in order to obtain some level of cost competitiveness with the incumbent materials.

Article 6- §18980.6.7(i) Credit for Products that are Home Compostable

CJ Biomaterials asks that the regulations also incentivize home compostable products. Certified home compostable products present an important solution for managing packaging and waste at the local and individual level. We ask that the Department include a credit for packaging that is certified home compostable. A credit is justified for these products that are diverted into a backyard or community compost pile and are not an increased burden on the state to collect and manage.
We recommend adding a new subsection (3) as follows:
(3) In addition, plastic covered materials that meet the requirements of Section 42357 of the Public Resources Code to be labeled as "home compostable," which are also eligible to be labeled as "compostable" under these Regulations, shall receive a further reduced fee.

Article 11- Section 18980.11. Requirements for Local Jurisdictions and Recycling Services

We oppose the underlined new language in §18980.11(b). CalRecycle has explained that their intention is to clarify that local jurisdictions are not required to establish Responsible End Markets (REM). We recognize that local jurisdictions should not ultimately be accountable for the establishment of REMs and that the PRO should be

liable for ensuring REMs are established through collaboration with local jurisdictions. Local jurisdictions should not be subject to any enforcement actions or penalties as a result of the lack of existing REMs under SB 54. However, the language as drafted would establish a broad exemption allowance for local jurisdictions to pursue for materials that may not currently be part of the recycling/composting collection program or that require more focused effort by the PRO. This will allow local jurisdictions to obtain an exemption for products like compostable covered products which will make statewide uniformity and successful capture and processing of these materials challenging.

We believe the following amendment will satisfy the Department's objective without unintentionally creating a loophole that will allow challenging materials without existing REMs to be exempted from the local jurisdiction collection programs.

(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and directs it to recycling at responsible end markets, either by transferring transfers it to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge f<u>or grounds of applying for an extension or exemption in processes detailed in</u> ~~rendering inclusion of the covered material in the program impracticable for purposes of~~ subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

Home Compostable Products in the Regulatory Framework

We continue to advocate for the inclusion of home compostable products within the SB 54 framework and for the inclusion of specific allowances and considerations for these products. The Department has communicated their position that SB 54 does not call for the inclusion of home compostable products and that there is no basis for including home compostable products in the regulatory framework. We respectfully disagree with this assessment for the reasons outlined below.

SB 54 requires that all products be recyclable or labeled "compostable" per Chapter 5.7 and as such home compostable products should be recognized in the regulations and considered as a distinct and important subset of compostable covered products.

Under SB 54, all covered material must be (1) "recyclable in the state" or (2) "eligible for being labeled compostable in accordance with Chapter 5.7." See PRC § 42050(b). Throughout the statute, compostability is repeatedly referenced in conjunction with recyclability, and in some cases given special attention to encourage compostability as a critical part of the Legislature's vision for waste diversion. Section 42050 mandates a

two-pronged plan where "recyclable" and "compostable" are the two equal tools available for implementing this plan.

Meanwhile, Chapter 5.7 of the Public Resources Code, which supplies the statutory anchor for SB 54's statements on compostability, encompasses two overlapping but distinct forms of compostable products: industrial compostable and home compostable. Because home composting favors inherently biodegradable polymers that are more susceptible to microbial activity as opposed to the hydrolysis that occurs in industrial composting, products labeled as "home compostable" must meet more stringent criteria than for "compostable" products, i.e., those that are suitable for industrial composting. The reference in SB 54's section 42050(b) to "eligible for being labeled compostable" therefore was intended, in context, to include products that are eligible for being labeled either "compostable" or "home compostable." Further evidence of this intent is found in SB 1046, which was passed during the same legislative session as AB 1201 and is now codified under Public Resources Code Section 42281.2. That law provides that a compostable bag can be either "compostable" or "home compostable" pursuant to Section 42357 – no preferential treatment is given to one over the other.

Home composting is appropriate only for a small subset of products that are certified to break down in a home composting system. These products offer an important alternative for brands and consumers who want to ensure end-of-life management of their products.

Companies serving food will be especially constrained in meeting recycling targets under the new regulations. For producers of single-use foodware (such as utensils, straws, plates, and cups), and in the case of film applications, compostability will be the primary means of compliance. To realize these ambitious targets, these companies need to be able to use all material types which includes home compostable products.

Limiting the end-of-life pathways for a home compostable product to industrial composting sites runs contrary to the ultimate objectives of SB 54, particularly while we are very early in efforts to build out industrial composting acceptance and infrastructure across the state. Home composting needs to be preserved as a pathway, even if short term, available to California consumers, communities and companies.

We ask the Department to reconsider their position and revise the regulations to effectively manage home compostable products.

Need For a Viable Compliance Pathway for Compostables

Compostable packaging and food service products are a critical compliance pathway under SB 54, offering producers and brands needed tools to reduce plastic waste and to comply with the program's goals. However, AB 1201 and the resulting California statute establishing compostability standards, presents an ongoing challenge. It threatens the viability and success of the SB 54 program and the future role of compostable products by establishing eligibility to be deemed "compostable" and tying this eligibility to the USDA's National Organic Program (NOP). This linkage threatens to damage not only

the compostable products industry but the broader marketplace who need compostable options in specified applications. It is clear that SB 54's success depends on ensuring that compostable pathways remain viable and do not become artificially foreclosed. To this end, we appreciate the Department's recognition of the need for compostable products and their decision to grant an extension to this statutory provision to allow time for these materials to be appropriately integrated into the NOP. We remain committed as a company and an industry to working constructively with the Department and key stakeholders to ensure that regulatory requirements are clear and manageable in the context of real-world market and infrastructure conditions. We hope to support a future system that works for all parties- haulers, composters, producers and farmers. We look forward to continued collaboration towards this end and in ensuring compostable products can serve as a meaningful tool for achieving SB 54's environmental objectives. Thank you for the opportunity to submit these comments for the Department's consideration.

Sincerely,

LAUREN SCOTT
Director of Corporate Affairs
CJ Biomaterials
lauren.scott@cj.net
(916) 616-0831

Response to O-37-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

O-38: National Wooden Pallet and Container Association (Annalee Augustine)

Comment O-38-1

Zoe Heller, Director
Public Affairs Office
1001 I Street
Sacramento, CA 95812

February 13, 2026

RE: January 29 Proposed Regulations for California Senate Bill 54,
Plastic Pollution Prevention and Packaging Producer Responsibility Act

The National Wooden Pallet and Container Association (NWPCA) appreciates the

opportunity to provide comments on CalRecycle's proposed revisions to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations. The permanent regulations are an important step in carrying out rulemaking for SB 54 as the Legislature intended, and providing clarity to regulated entities.

NWPCA is the only global wood pallet trade association, representing more than 450 companies in the United States and another 400 globally. The U.S. wood pallet sector is a relatively small but critical industry comprised of over 3,4001 predominantly small- and medium-sized businesses spread across every state. This network of companies ensures the supply chain has the pallets needed to move essential goods throughout the country. Any disruption or unnecessary burden will simply hurt family-owned businesses and translate to higher costs for consumers. All without cause, as pallets already have the highest documented recovery, reuse, and recycle rate of any packaging product in the supply chain (95%)2 when compared to other published numbers.3

As set forth in NWPCA's prior comment submittal, since wooden pallets are not single-use, such are not "covered material" under a plain reading of SB 54. The wood pallet industry claims the world's highest recycling rate of any packaging material, with over ninety-five percent(95%+) of wooden pallets are repaired, remanufactured, and recycled into other useful materials—not landfilled4.

1 https://www.naics.com/naics-code-description/?code=32192
2 Shiner et al. (2021). "Landfilled & Recovered Pallets," BioResources, https://bioresources.cnr.ncsu.edu/wpcontent/uploads/2021/01/BioRes_16_1_1496_Shiner_HAG_Investig_Wood_Palllets_Landfill_Recovery_17119.pdf
3 Cosgrove. (2024). "Package Recycling Stats by the Numbers." Packaging Digest, https://www.packagingdigest.com/sustainability/package-recycling-stats-by-the-numbers

Section 18980.2.1 Exclusion of Reusable and Refillable Packaging and Food Service Ware is also critical for wooden pallets because wooden pallets are designed for repeated use within closed-loop and reverse-logistics systems. The commercial consumers of wooden pallets have routine and practical access to reuse and recovery infrastructure, meeting the requirements set forth in Section 18980.2.1(a)(4) regarding "infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles."

For the purposes of this exclusion, the regulations state that the relevant "consumer" is not a household or individual purchaser of the underlying product, but rather the last entity in the supply chain that acquires and uses the item for its intended logistics function. This could be a warehouse, distribution center, retailer, or other commercial operator. These entities routinely have access to adequate infrastructure to ensure

wooden pallets are returned, reused, repaired, pooled, or recycled through established commercial recovery systems.

As a result, wooden pallets are properly excluded from "covered material" under SB 54, consistent with both the statutory framework and the Legislature's intent to regulate single-use packaging. NWPCA appreciates that the proposed permanent regulations make no changes that would alter this exclusion.

We welcome continued engagement with CalRecycle on this issue and have attached draft guidance for the Department's consideration that would further clarify the application of Section 18980.2.1 to tertiary packaging, including wooden pallets, for the benefit of regulated entities and stakeholders. On behalf of the U.S. wooden pallet industry, NWPCA respectfully requests that CalRecycle confirm that wooden pallets do not fall within the jurisdictional parameters of SB 54 via publication of such guidance.

Sincerely,
Jason Ortega
Senior Vice President
National Wooden Pallet and Container Association

4 https://bioresources.cnr.ncsu.edu/wpcontent/uploads/2021/01/BioRes_16_1_1496_Shiner_HAG_Inves﷽g_Wood_Palllets_Landfill_Recovery_17119.pdf

Draft CalRecycle Guidance

Clarification of "Consumer" and "Adequate Infrastructure" for Tertiary Packaging Under Section 18980.2.1 Exclusion of Reusable and Refillable Packaging and Food Service Ware

I. Purpose
This guidance provides clarification for regulated entities and stakeholders regarding the application of Section 18980.2.1 to tertiary packaging, including common distribution and logistics materials such as shrink wrap/film and wooden pallets. The guidance focuses on two concepts:
1. The meaning of "consumer" as applied to tertiary packaging under Section 18980.2.1(B); and
2. How access to adequate infrastructure by the consumer affects whether an item qualifies as reusable or multiple-use under Section 18980.2.1(a)(4) and is therefore excluded from covered material.

II. Background
Section 18980.2.1 establishes exclusions for reusable and refillable packaging and food service ware. For tertiary packaging, determining who the "consumer" is and whether that consumer has access to adequate infrastructure is essential for consistent implementation.

III. Definition of "Consumer" for Tertiary Packaging

A. Regulatory Text

Section 18980.2.1(a)(1)(B) provides:

"Consumer" means the end user of an item, or the last person in the supply chain who acquires and uses an item.

B. Clarification for Tertiary Packaging

For tertiary packaging, the "consumer" is not necessarily a household or individual purchaser of the underlying product. Because tertiary packaging is used to unitize, stabilize, protect, and transport goods through distribution channels, the consumer is often, but not limited to:

- A grocery retailer,
- A warehouse,
- A distribution center,
- A third-party logistics provider (3PL), or
- Another commercial entity that is the last party in the supply chain that acquires and uses the tertiary packaging item for its intended logistics function.

C. Illustrative Examples

1. Stretch/shrink wrap used on a palletized load: The "consumer" will often be the distribution center or retailer that receives the palletized goods and removes/handles the wrap as part of receiving operations.
2. Wooden pallet used for shipment: The "consumer" will often be the grocery chain, distribution center, or warehouse that receives the pallet and uses it (e.g., to store, move, stage, or redistribute goods) or returns it into a pallet reuse/recovery system.

IV. Adequate Infrastructure and Multiple-Use Qualification

A. Regulatory Concept

Under Section 18980.2.1(a)(4), an item may qualify as reusable/multiple-use where the consumer has access to adequate infrastructure to ensure the item is reused, reclaimed, or recycled through established systems.

B. Clarification: What "Adequate Infrastructure" Means in Commercial Settings

For tertiary packaging, "adequate infrastructure" may exist where the consumer (as defined above) has routine, practical access to one or more of the following:

- On-site recycling collection (e.g., a designated recycling bin, compactors, or balers for film/plastics);
- A dedicated trailer or storage area for accumulating recyclable or reusable materials;
- Regular pickup or service by a recycler, reclaimer, or reuse operator (e.g., scheduled service for pallet recovery, film recycling, or reusable transport packaging); or
- Participation in an established reverse logistics or recovery program (e.g., pallet return, repair, remanufacture, pooling, or take-back systems).

Adequate infrastructure should be evaluated in a practical manner, focusing on whether the consumer can reasonably and routinely route the item into a reuse, reclaim, or recycling pathway as part of its normal operations.

C. Implication for Covered Material Determinations

Where the consumer has access to adequate infrastructure as described above, the item should be treated as a reusable/multiple-use item for purposes of Section 18980.2.1 and therefore excluded from covered material, consistent with the exclusion framework.

V. Documentation and Demonstrating Access to Adequate Infrastructure
For tertiary packaging shipped within the normal course of commerce in a business-to-business transaction, a regulated entity may assume that the identified consumer has access to adequate infrastructure, unless the regulated entity has a good-faith basis to determine that adequate infrastructure does not exist.
If a regulated entity has a good-faith basis to determine that adequate infrastructure does not exist for the likely consumer, regulated entities and stakeholders may support their exclusion determination by maintaining records that, as applicable, document the following:
• the identity of the likely "consumer" for the tertiary packaging item (e.g., distribution center/retailer);
• the basis for the good-faith determination that adequate infrastructure does not exist (e.g., unusual delivery locations, known absence of recovery services, or information indicating the item is routinely disposed);
• the consumer's access to infrastructure, if any (e.g., service agreements, invoices, pickup schedules, photos of on-site recycling systems, or participation in an established reverse logistics or recovery program); and
• evidence of routing into reuse, reclaim, or recycling pathways where available (e.g., pallet return/repair or pooling account records, weight tickets/receipts, recycling certificates, or diversion reports).
Documentation should be practical and scalable and need not require case-by-case verification of each downstream customer where records at the program, customer-class, or network level are representative of normal operations.

Response to O-38-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-39: U.S. Poultry & Egg Association (Paul Bredwell)

Comment O-39-1

February 13, 2026

California Department of Resources Recycling and Recovery
Regulations Unit
1001 "I" St., MS-24B
Sacramento, CA 95814

RE: SB 54 Regulations 15-Day Comment Period

Dear Sir or Madam,

On behalf of the poultry and egg industry, The US Poultry & Egg Association (USPOULTRY) appreciates the opportunity to comment on the recent revisions to the draft regulations implementing the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act, specifically the proposed changes to Section 18980.2 governing the food and agricultural categorical exemption.

USPOULTRY is the world's largest and most active poultry organization. Membership includes producers and processors of broilers, turkeys, ducks, eggs, and breeding stock, as well as allied companies. Formed in 1947, the association has affiliations in 26 states and member companies worldwide.

Our members operate throughout California and across the United States, and are committed to responsible environmental stewardship and recognize the California Legislature's intent to reduce plastic pollution while maintaining safe and affordable access to food. However, we write to urge CalRecycle to revise its approach to provide a more workable system to identify categorical exemptions for both industry and the agency.

Packaging poultry presents unique food safety challenges. Poultry producers are already subject to comprehensive oversight by regulatory agencies, to ensure packaging and product safety compliance. Packaging must prevent cross-contamination, leakage of liquids, and exposure to pathogens. It must be designed to maintain cold-chain integrity, preserve shelf life, and reduce food waste, all while complying with mandatory federal inspection and labeling requirements.

However, the revised provisions governing the food and agricultural categorical exemption impose a level of structural complexity that is unworkable for both poultry producers and CalRecycle, and inconsistent with the realities of food safety, supply chain operations, and consumer demands.

The Proposed Framework Creates an Excessive Evidentiary Burden in a Highly Regulated Industry

The revised Section 18980.2 establishes a highly prescriptive, documentation-intensive, and iterative approval process to meet the threshold for categorical exemption of packaging of food and agricultural products. For poultry providers, who operate in a highly regulated environment, this structure is overly burdensome and not feasible.

In summary, the draft regulations would require producers to demonstrate that there are no reasonably possible alternatives to each food packaging item at issue by making various demonstrations that (1) mandatory standards for safety and structural integrity cannot be met with a packaging alternative, (2) eliminating or replacing packaging components does not solve the conflict between SB 54 and existing law, ***and*** (3) redesigning or replacing the packaging as a whole does not avoid all legal conflicts.

As written, this framework imposes an evidentiary burden that exceeds what is reasonably necessary to demonstrate that the packaging performs essential food safety functions and that alternatives are not reasonably feasible without compromising safety, increasing food waste, or significantly disrupting operations. By requiring granular demonstrations of infeasibility and conflict analysis, the revised exemption process would require significant investments in legal and technical analyses for food producers on all packaging products. Subject entities will face significant compliance costs merely to prepare exemption petitions, regardless of outcome, which will increase costs for California consumers.

A categorical exemption framework should reduce—not expand—administrative complexity and barriers for essential food packaging that is necessary for safety and compliance. Food providers need predictability and clear pathways to achieve compliance.

Response to O-39-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections as does this comment regarding the burden imposed under section 18980.2(a)(2). CalRecycle also rejects the commenter's assertion that satisfying the requirements of section 18980.2(a)(2) imposes undue costs. As explained in subparagraph (C), a notice submitted to satisfy the requirements of subparagraph (B) will only be rejected if it is deemed incomplete or fails to address packaging known to avoid the cited conflict with federal requirements; completeness determinations do not entail a complete substantive review of the information provided or study of all possible or theoretical alternatives and thus does not impose the burden of a complex "infeasibility and conflict analysis." To the extent an entity cannot determine that an alternative can be used without conducting complex analyses and studies, that would necessarily establish that no such alternative is currently known. The commenter's fundamental objection is to entities having to prove that they should not be subject to the Act. In contrast to the much greater cost that complying with the Act would entail, the burden of having to offer such proof is reasonable. Likewise, the commenter's assertion that the exclusion framework expands "administrative complexity and barriers" is unreasonable because the effect of the exclusion is to excuse entities from the greater administrative complexity that the Act otherwise would impose.

Comment O-39-2

The Proposed Exemption Process Is Operationally Unworkable

Safe packaging for sensitive food products, like raw poultry, has been developed and refined over decades. Proposed changes to packaging to satisfy recycling and recyclability thresholds would require extensive food safety validation studies, shelf-life testing, label redesign and approval, and coordination with retailers and distributors. The proposed rules appear to assume that producers can readily generate alternative

analyses and assess materials for substitution and compliance on all products in a relatively tight window. In practice, such analyses often require months of testing, third-party validation, and capital investment.

Furthermore, the proposed rule creates a system where regulatory approval is unpredictable and revocable on short timelines. Creating a process by which producers must make detailed and highly technical demonstrations for each covered product will likely result in an overwhelming number of filings with CalRecycle. Requiring this level of documentation for each covered packaging material will create regulatory paralysis and could very well overwhelm CalRecycle as it seeks to make determinations on exemptions.

Response to O-39-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises substantially the same objections as does this comment, and comment O-39-1, which raises similar concerns over the complexity of the process required under section 18980.2(a)(2). Furthermore, the commenter's assertion that 18980.2(a)(2) requires entities to "readily generate alternative analyses and assess materials for substitution and compliance on all products in a relatively tight window" is incorrect. If an entity cannot identify an alternative that avoids the cited legal conflicts because doing so would require complex analyses, studies, and testing, that would establish that there are no such alternatives that can be used. Moreover, if CalRecycle later considers a notice to require supplementation—for example, because new materials have been developed that appear to resolve the cited conflict with federal requirements and can be used—the process set forth in subparagraph (E) is lengthy and resolves the commenter's concerns over the difficulties in transitioning to different packaging. Regarding "regulatory paralysis," the risk of such an outcome does not fall on regulated entities because findings of incompleteness must be provided within 90 days. Moreover, the likelihood that many, if not most, submissions will concern the same conflicts and substantially similar packaging means that CalRecycle will likely be able to make completeness determinations for large numbers of submissions simultaneously.

Comment O-39-3

The Proposed Structure Fails to Account for Customer Quality Demands that Exceed Federal Food Safety Requirements

As drafted, the proposed rules will force poultry and other food producers to lower the standards of food packaging used in order to comply with recyclability requirements, because only those packaging components that are required by "mandatory" federal laws (per Section 18980.2(a)(2)) can be used to support an exemption.

In many cases, poultry producers must package food products to achieve customers' quality demands using packaging components that may exceed the regulatory baselines of federal food safety requirements. However, the regulations as drafted

require a demonstration of a conflict with only "mandatory" federal requirements and do not account for packaging components that are incorporated to meet other quality and market standards, let alone an individual producers judgment about what additional level of quality protection may be appropriate above federal requirements. This framework would thus lower the bar and force companies to use packaging that achieves only the baseline level of food safety.

Response to O-39-3

Comment rejected. In circumstances where meeting federal requirements does not prevent compliance with the Act, the mandates under Public Resources Code section 42060(b) cannot logically apply. If there is no conflict, but instead the packaging is merely disfavored because it raises unique challenges or health and safety risks, the Act affords relief through exemptions pursuant to Public Resources Code section 42060(a)(3) and (4), addressed in section 18980.2.4 of the proposed regulations. The commenter's assertion that section 18980.2(a)(2) "lower[s] the bar and force[s] companies to use packaging that achieves only the baseline level of food safety" may be relevant to such exemptions but is not relevant to whether a conflict with federal requirements justifies excluding packaging from the Act altogether.

Comment O-39-4

Recommended Revisions

To make Section 18980.2 workable while still advancing SB 54’s goals, we respectfully recommend that CalRecycle:

1. Establish a presumptive categorical exemption for packaging used for raw poultry and other perishable animal proteins, recognizing their unique food safety requirements.
2. Establish safe harbor provisions for poultry packaging components used for leak prevention, pathogen control, and shelf-life preservation.
3. Streamline documentation requirements for operational practicality.
4. Allow producers to rely on industry best practices and guidance to establish conflicts between the requirements of the Act and existing packaging practices, rather than only “mandatory regulations, rules, or guidelines.”
5. Deem a submitted notice of exemption as administratively complete per Section 18980.2(a)(2)(C)), if CalRecycle has not indicated incompleteness within 60 days after submission.

These changes would preserve the environmental objectives of SB 54 while preventing unintended consequences for public health, food waste, and consumer costs.

Conclusion

USPOULTRY supports pragmatic, science-based approaches to packaging reform. However, the revised Section 18980.2 provisions impose an inflexible and overly burdensome structure that fails to reflect the operational realities of poultry processing and the essential food safety functions of packaging.

We respectfully urge CalRecycle to revise the proposed rules to ensure that the categorical exemption process is workable, predictable, and aligned with food safety imperatives.
Thank you for your consideration of these comments. We appreciate your dedication to finding workable solutions for stakeholders and welcome the opportunity to engage further and provide technical information to support practical solutions.
If you should have any questions concerning our comments, please contact Paul Bredwell at pbredwell@uspoultry.org or by telephone at (678) 514-1973.
Respectfully,
U.S. Poultry & Egg Association

Response to O-39-4

Comment rejected. CalRecycle rejects the commenter's specific recommendations because each recommendation is founded on the objections raised in comments O-39-1 through O-39-3, each of which CalRecycle has rejected. Furthermore, regarding the commenter's first recommendation, CalRecycle also rejects that recommendation because a "categorical exemption" for certain packaging, without regard to whether the packaging implicates a conflict with federal law, would exceed CalRecycle's authority under the Act, which authorizes exemptions in certain circumstances, not blanket exemptions regardless of circumstances. CalRecycle also rejects the second recommendation for the same reasons; a "safe harbor provision" for certain poultry packaging is effectively the same as a categorical exemption. CalRecycle also rejects the third recommendation because it is vague with respect to what would constitute streamlined documentation requirements; other than that vague recommendation, it does not add to the commenter's earlier, more substantive comments, which CalRecycle has rejected. Regarding the fourth recommendation, which is based on the use of the word "mandatory," CalRecycle has explained why that word is appropriate in its response to comment B-3-1. Regarding the fifth recommendation (deeming notices complete after 60 days, not 90), CalRecycle rejects it because the 90-day period established in section 18980.2(a)(2)(C) more reasonably accommodates CalRecycle's capacity to review submissions, the volume of which CalRecycle cannot anticipate with precision. No response is necessary to the portion of this comment labeled "Conclusion" because it summarizes the commenter's submission and does not add new objections or recommendations. CalRecycle has responded to the commenter's objections and recommendations elsewhere.

O-40: Environmental Justice Communities Against Plastics (EJCAP) (Tevin Hamilton)

Comment O-40-1

February 12, 2026

To: Zoe Heller, Director
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Re: Comments on the SB 54 Revised Regulations
We are writing on behalf of Environmental Justice Communities Against Plastics (EJCAP), a coalition of California-based environmental justice organizations focused on addressing health and the environmental impacts of the lifecycle of plastics on frontline communities. Our coalition includes the Just Transition Alliance, Pacoima Beautiful, Physicians for Social Responsibility Los Angeles, Black Women for Wellness, and Valley Improvement Projects.
CalRecycle has narrowed the language on categorical exclusions, but serious concerns remain.
Instead of maintaining categorical exclusions, CalRecycle should rely on the existing exemption process under Section 18980.2.4 for packaging or packaging components used for food or agricultural commodities that cannot comply with SB 54 because of conflicting federal requirements. This process provides a more precise and accountable way to address legitimate compliance conflicts without broadly excluding entire categories of packaging.
If categorical exclusions are retained, plastic packaging will not be effectively addressed in California, and the resulting waste will continue to be sent to landfills located near disadvantaged communities, and continue exposing communities to toxic chemicals in plastic packaging. This outcome would undermine SB 54's goals and continue to harm environmental justice communities.

Response to O-40-1

Comment rejected. CalRecycle rejects the commenter's suggestion to rely only on the exemption process set forth in section 18980.2.4 because doing so would collapse Public Resources Code section 42060(b) concerning conflicts with federal laws and regulations into the exemption provisions of section 42060(a)(3) and (4), effectively ignoring the directives of the former. Construing statute by ignoring specific parts of it is not a legitimate approach to statutory interpretation, and the commenter does not suggest that exemptions authorized under section 42060(a)(3) or (4) would adequately avoid the conflicts described in 42060(b). CalRecycle also rejects this comment for the reasons stated in response comment I-19-1 (submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. As stated in that response, section 18980.2(a)(2) does not create a broad exclusion for entire categories of packaging. It excludes packaging based on discrete conflicts with federal requirements, not based on broad packaging categories.

Comment O-40-2

We remain deeply concerned that the current draft regulations fail to meaningfully protect communities and the environment from harmful chemical recycling

technologies—often misleadingly promoted as “advanced recycling” or “advanced manufacturing.” In practice, these processes function as incineration under a different name. Chemical recycling generates and releases toxic pollutants into our air, land, and water, posing significant risks to public health and environmental safety. Despite these well-documented concerns, the draft regulations continue to lack adequate safeguards to prevent the siting of such facilities and related infrastructure in or near environmentally overburdened and vulnerable communities.
Without explicit, enforceable, location-based protections, implementation of these regulations risks exacerbating existing environmental injustices and further concentrating pollution in communities that already bear a disproportionate burden.
California is at a pivotal moment in the global fight against plastic pollution. SB 54 was passed with the clear intent to reduce plastic production and protect communities from the public health impacts of plastics. CalRecycle must honor that intent—not undermine it.
Signed,
Tevin Hamilton
Coordinator, Environmental Justice Communities Against Plastics Coalition (EJCAP)
Maro Kakoussian,
Physicians for Social Responsibility - Los Angeles
Tianna Shaw-Wakeman,
Environmental Justice Program Director, Black Women for Wellness Action Project
Nona Chai
Program Coordinator, Just Transition Alliance
Veronica Padilla
Executive Director, Pacoima Beautiful
Thomas Helme & Bianca Lopez
Co-Founders, Valley Improvement Projects (VIP)

Response to O-40-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-41: Global Alliance for Incinerator Alternatives (Sirine Rached)

Comment O-41-1

Zoe Heller, Director
Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street
Sacramento, CA 95814

Cc: Mindy McIntyre, Chief Deputy Director,
Karen Kayfetz, Product Stewardship Branch Chief

Re: Comments on 29 January 2026 SB 54 Regulations
Submitted electronically on February 13, 2025, via CalRecycle Public Comment form

Director Heller,

We welcome the opportunity to submit comments on this iteration of the SB 54 regulations with regard to changes made during OAL review. This letter focuses on Section 18980.2, Categorically Excluded Materials.

Our concerns on matters not raised by OAL, including on responsible end markets and the regulations' failure to effectively exclude technologies that harm health, the environment and environmental justice, still stand, as detailed in our 10 October 2025 correspondence titled "Re: Comments on 19 August 2025 Draft SB 54 Regulations, focus on pyrolysis incineration and related technologies ". (attached).

We welcome the narrowing of categorically excluded materials to covered materials where compliance with SB 54 triggers a breach of "mandatory" USDA or FDA regulations, rules or guidelines in Section 18980.2(a)(2).

At the same time, **GAIA recommends that the regulation clarify that the following language only refers to USDA or FDA mandatory standards:**
-"all applicable mandatory standards" (Section 18980.2(a)(2)(B)(i));
-"creates no new unavoidable legal conflict with any law" (Section 18980.2(a)(2)(B)(i));
-"all legal conflicts" (Section 18980.2(a)(2)(B)(ii) and (iii)).

The regulations also currently propose that notices of exclusion apply by default (Section 18980.2(a)(2)(D)), with CalRecycle's optional ability to request additional information (Section 18980.2(a)(2)(E)). The regulations open a loophole with automatic exclusions of 8 months or more for all notices, even those that ultimately fail. Indeed, covered material status suspension begins with the uploading of complete exclusion notices to the database (subparagraph (D)), continues during CalRecycle's request for additional information (no time limit), during its notification of insufficient information for a determination (with a 60-day response window from the producer), and 180 days after CalRecycle's determination that the notice fails to demonstrate qualification after additional information (subparagraph (E)). This timeline is excessively long and could encourage the submission of exclusion notices to delay compliance, undermining the effectiveness of SB 54 as a whole.

GAIA therefore recommends an authorization process rather than a notification process for the granting of exclusions. This would keep materials targeted by categorical exclusion applications as covered material unless and until a positive exclusion determination is issued by CalRecycle.

Response to O-41-1

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-25-2, which presents objections and recommendations substantively the same as those this comment presents.

Comment O-41-2

Furthermore, exclusions need a **2-year sunset clause**, in recognition of market developments providing alternatives that satisfy both SB 54 and mandatory USDA and FDA standards. Cabinet Health reusable medication packaging, already available throughout the United States, is a notable example of market innovations that reduce the need for SB 54 exclusions (see https://cabinethealth.com). The sunset clause will also ensure that CalRecycle does not exceed its authority by establishing permanent exclusions that exceed those defined in the statute.

Response to O-41-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment O-25-2, which presents the same objection and recommendation as does this comment. CalRecycle also rejects the assertion that a "sunset clause" would avoid establishing a permanent exclusion in excess of those defined in the statute. Even assuming the commenter is correct that section 18980.2(a)(2) potentially exceeds CalRecycle's authority, it does not explain how the proposed change would remedy that problem. Nor does section 18980.2(a)(2) create a "permanent exclusion"; all exclusions are subject to CalRecycle's substantive review, which necessarily will reflect changes in available packaging materials and technologies.

Comment O-41-3

Finally, the regulation allows a producer to apply for successive exclusions for the same packaging, turning the 8-month automatic exclusion window into a perpetual loophole (subparagraph (F)).

GAIA recommends that the regulations strike out subparagraph (F) and include instead language specifying that a producer may only re-apply for a packaging or packaging component exclusion after a 5-year window following a failed determination.

Thank you for your attention to this matter, and we remain at your disposal should CalRecycle wish to discuss any of these issues at further length.

Sincerely,

Sirine Rached, Senior policy advisor, GAIA
Contact: sirine@no-burn.org.

The Global Alliance for Incinerator Alternatives (GAIA) is a global network of grassroots groups working to catalyze a global shift towards environmental justice by strengthening grassroots social movements that advance solutions to waste and pollution. We envision a just, zero waste world built on respect for ecological limits and community

rights, where people are free from the burden of toxic pollution, and resources are sustainably conserved, not burned or dumped.

Response to O-41-3

Comment rejected. The commenter is incorrect that subparagraph (F) of section 18980.2(a)(2) creates a "perpetual loophole." To the contrary, subparagraph (F) has been added to address that potential. A notice for packaging that is the same as, or substantially similar to, packaging already covered by a prior notice that is still within the 180-day period described in subparagraph (F), or submitted at any time after that period, will have no effect unless and until CalRecycle determines that the notice has merit. The 180-day period begins only if CalRecycle determines the previous notice does not justify the exclusion. See CalRecycle's response to comment O-25-2, which raises a similar objection as this comment raises.

O-42: International Dairy Foods Association (Danielle Quist)

Comment O-42-1

Please see the attached comments respectfully submitted on behalf of the International Dairy Foods Association.

Danielle Quist
Vice President, Regulatory Affairs and Counsel
International Dairy Foods Association

Response to O-42-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-42-2

February 13, 2026
Submitted Electronically to the California Department of Resources Recycling and Recovery (CalRecycle)
Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations
The International Dairy Foods Association (IDFA), located in Washington, D.C., appreciates the opportunity to provide comments on CalRecycle's (the "department's") proposed permanent regulations for California Senate Bill (SB) 54, the state's extended producer responsibility (EPR) program. IDFA represents the nation's dairy manufacturing and marketing industry, which supports more than 3.2 million jobs that generate $49 billion in direct wages and $794 billion in overall economic impact. IDFA's diverse membership ranges from multinational organizations to single-plant companies and dairy companies and cooperatives to food retailers and suppliers. Together, our

members represent most of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world. More information about IDFA can be found at www.idfa.org.
IDFA is writing to submit comments on proposed section 18980.2(a)(2) (Categorically Excluded Materials), which purports to implement the statutory provisions requiring the department to ensure that any regulations "do not conflict with" federal regulations issued by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA), and further prohibiting the department from imposing any requirement "in direct conflict" with federal law, regulations, or guidelines. Cal. Pub. Res. Code § 42060(b)(1)-(2). IDFA appreciates the department's work to provide additional detail on how packaging material may qualify for the exclusion. We have significant concerns, however, that the proposed text would materially narrow the scope of the exclusion as provided by the statutory text and impose requirements not found in the statute. These changes would effectively prohibit the use of materials that are needed to ensure food safety and compliance with federal requirements, particularly in dairy foods.
At a high level, addition of the term "mandatory" – which is inconsistent with SB 54, as the statute refers to direct conflict with federal "guidelines" – and the proposed requirement that companies must demonstrate in detail that no other packaging alternative is "reasonably possible" to use raises the burden of proof so high that it will be impossible to obtain a categorical exclusion. Not only is this interpretation not authorized by SB 54, but this approach also does not accommodate food safety and other regulatory conflicts. For dairy, food safety and product shelf life are closely tied to its packaging, and the proposed regulations will result in food packaging that is integral to the safety and quality of dairy foods being outlawed. We also have concerns that the department has not addressed how it intends to protect the highly confidential information that would be submitted as part of a notification that packaging material is excluded.

Response to O-42-2

Comment rejected. The commenter raises its "high level" concerns over the term "mandatory" and the burden of justifying that the exclusion should apply. CalRecycle has addressed those concerns in response to comment B-3-1 and rejects this comment for the reasons stated in that response. Regarding the submission of confidential information, no revision is needed to address concerns over such information, as explained in response to comment O-30-3.

Comment O-42-3

More specifically, the proposed regulatory text is inconsistent with the statute because of the following:
• Effectively an "Impossibility" Standard: The new section 18980.2 effectively imposes a "impossibility" standard that is not authorized by the statute, whereby in order to claim an exclusion, a producer must effectively demonstrate it is impossible to comply with federal law and the California law using existing packaging options.
o The proposed regulations state that it must not be "reasonably possible" to

use other packaging or packaging components while complying with both federal and California law. In practice, however, each of the new elements in subparagraph (B) of section 18980.2(a)(2) would require companies to prove a negative, costly and burdensome exercise that the California legislature did not authorize the department to require. The definition of “reasonably possible” is not aligned with the subsequent requirements. The three requirements are characterized in absolute terms and do not have any characteristics of “reasonableness” or an ability to balance competing considerations such as technical or economic feasibility, or the time needed for such materials to become authorized and available in commercially sufficient quantities.

o The term “not reasonably possible” – not “impossibility” – is that standard used by the California Supreme Court when assessing state preemption of local laws based on conflicts. *See Chevron U.S.A., Inc. v. County of Monterey,* 15 Cal. 5th 135, 150 (2023) (“Carried to its logical extension, PMC's argument would mean that a local law that contradicts state law would never be preempted, because in almost every case, it is theoretically possible for a party to comply with state and local laws that contradict each other, simply by not engaging in the conduct prohibited by local law.”). *Id*. at n.8 (“It may be *possible* for a local resident to comply with both laws by driving at or below the lower, local speed limit, or by not driving at all, but this does not mean that compliance with both laws is "reasonably possible" such that the local law is not preempted.”). There is no need for these regulations to define this term, and certainly not to define it more restrictively than the California Supreme Court has done.

Response to O-42-3

Comment rejected. Regarding "reasonably possible" and the burden associated with justifying exclusion under section 18980.2(a)(2), CalRecycle rejects this comment for the reasons stated in response to comment B-3-1. Regarding the commenter's reference to preemption principles, CalRecycle rejects this comment for the reasons stated in response to comment O-49-4.

Comment O-42-4

Meaning of “Conflict”: The proposed regulations interpret the term “conflict” too narrowly by suggesting that a conflict only exists where the law would allow no other material to be used to meet the standard. This approach does not reflect the reality of how federal laws and regulations govern food packaging. The federal regulatory approach for foods does not use a command-and-control approach that dictates a particular type of packaging must be used; rather, federal law sets performance standards and requires that packaging must be selected to ensure such standards are met.

o Examples of these federal performance standards include the adulteration standard; the misbranding standard; food standards of identity that essentially provide recipes and “make” procedures for certain foods, particularly for many dairy foods; requirements for materials that are food

contact substances; the prohibition on nonfunctional slack fill; or the requirements for low-acid canned foods and acidified foods to file scheduled processes with FDA. Each of these federal requirements lays out a broad standard and where a particular packaging material or component is selected to meet the requirements of that standard, there would be a direct conflict with federal law if California law were to ban that material/component (e.g., under the 2032 recyclable/compostable provision or otherwise) – regardless of whether there is theoretically some other packaging material that could satisfy both the federal standard and the California EPR law.

o As just one example, under the federal adulteration standard and the FDA standards of identity regulations, which impose minimum moisture specifications and, in some cases, minimum pH levels, cheese requires a modified atmosphere, which is currently only able to be achieved through the use of various flexible film packaging formats. To deliver safe food to consumers at retail, that modified atmosphere cannot be compromised without risking mold (which could contain toxins and therefore would present a food safety issue), spoilage, or contamination (any of which would render the food adulterated under the law). Moreover, flexible films extend shelf-life, thus reducing food waste. Alternatives such as monolayer paper-based packaging would present an unacceptable food safety risk due to the likelihood of tears and punctures. While glass and rigid plastics could be used, the container holding cheese would need to be hermetically sealed, and most likely need a plastic film barrier. Further, packaging cheese in a rigid container would often mean using significantly more packaging than needed, increasing the environmental footprint of transportation, meaning certain alternatives could be less optimal from an environmental standpoint. Meanwhile, waxed paper is not recyclable and therefore does not represent an appropriate alternative under SB 54.

In this example, from a practical perspective, there is no alternative material to flexible film packaging formats for cheese that makes it reasonably possible to comply with federal food safety and standard of identity requirements. Further, any alternative materials still require the use of plastic film. Yet, based on the proposed regulations, it is unclear what producers would have to demonstrate to claim the exclusion, what data or information they would have to provide, or how much risk to food safety would be considered tolerable. And CalRecycle would have an opportunity to second-guess scientists and technical experts by identifying alternative materials without having to scrutinize whether they are in fact a reasonably possible alternative.

o This means the department has interpreted “conflict” to only mean a conflict based on impossibility where it is impossible to comply with both federal and California law. But the plain meaning of conflict is broader than that, and could include situations where a particular type of packaging is optimal to achieve the federal performance standard, even if it is not the only possible type of packaging theoretically available; where the

particular packaging type offers the best balance with respect to a federal standards such as one related to food safety and other factors such as cost, quality, and consumer taste or preferences; or where the particular type of packaging has been expressly reviewed by the agency and determined to adequately minimize the potential for microbial contamination.
o SB 54 does not allow the department to effectively force the use of alternative packaging materials or components that are less optimal for achieving a federal safety or quality standard. Such an outcome directly conflicts with federal law.

Response to O-42-4

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. As also explained in that response, the proposed regulation does not presume that federal requirements dictate packaging in a "command-and-control" manner. Rather, the term "mandatory" is a synonym with "required" and only modifies "rules, regulations, or guidelines" to clarify that that phrase refers to packaging requirements that must be met to comply with applicable laws. This comment repeatedly acknowledges that such requirements exist, referring to federal standards as "requirements for materials," "prohibition on nonfunctional slack fill," "requirements for low-acid canned food," "federal requirements," and "requirements of that standard." The example provided in this comment further demonstrates that federal rules, regulations, and guidelines impose requirements that packaging must meet. The commenter describes the "federal adulteration standard and the FDA standards of identity regulation" as "impos[ing] minimum moisture specifications and, in some cases, minimum pH levels." The plain term "mandatory" ensures that section 18980.2(a)(2) is understood as referring to such requirements.
Regarding clarity concerning demonstration that the exclusion should apply, CalRecycle also rejects this comment for the reasons provided in response to comments B-56-2 and O-31-5.
CalRecycle also specifically rejects this comment to the extent it argues that safety risks of packaging known to be usable and that would resolve the conflicts with federal law should be eligible for the exclusion because they are disfavored for health and safety reasons. The exemptions for "unique challenges" and health and safety risks under Public Resources Code section 42060(a)(3) and (4), addressed in section 18980.2.4 in the proposed regulations, address such concerns. The availability of exemptions resolves the commenter's objection based on CalRecycle allegedly having "an opportunity to second-guess scientists and technical experts," an objection that CalRecycle also rejects for the reasons stated in response to comment O-49-6.

Comment O-42-5

- “Mandatory”: The term “mandatory” is not found in the statute. To the contrary,

the statute refers to “guidelines” issued by USDA and FDA. By allowing only “mandatory” federal standards to establish a direct conflict, the department would be impermissibly narrowing the scope of the exemption. In many cases, FDA and USDA interpret their regulatory standards via guidance, and consistent with the statute, such “guidelines” can establish a federal standard with which California’s EPR law may not be in direct conflict.

Response to O-42-5

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1, which raises the same objection regarding the term "Mandatory." The commenter's assertion that "guidelines" can conflict with federal standards does not prove that the term "mandatory" is inappropriate because, as the commenter acknowledges, those "guidelines" are publications through which a government agency "interpret[s] their regulatory standards." Therefore, the guidelines are "mandatory" in the sense that they govern interpretation of the underlying regulatory standards, which, as the commenter concedes elsewhere, are legal requirements.

Comment O-42-6

• Self-Executing vs. Department Review: The provision in the proposed regulations allowing CalRecycle to identify alternative packaging that it believes would avoid the cited conflict, is not authorized by SB 54. Instead, PRC 42060(b) is intended to be self-executing and does not authorize CalRecycle to resolve claims of conflicts with federal law. The purpose of 18980.2(a)(2) should be to create a public registry of conflicts that are claimed, not to create a process by which CalRecycle decides the validity of each claimed conflict.
o Moreover, the proposed regulations introduce an arbitrary standard that is overly discretionary to CalRecycle. The draft rule provides no sense of how much data a producer would need to submit to claim an exclusion. Simply because nascent research and development efforts have identified a possible packaging material or component that would technically or theoretically satisfy both federal and SB 54, does not mean that the innovation is scalable, cost-effective, technically equivalent, authorized by FDA, etc. Likewise, the proposed regulations leave it unclear what standard would govern CalRecycle’s assessment when deciding whether an alternative type of packaging is a reasonably possible alternative. For example, what would the department need to consider with respect to availability, economic feasibility, technical feasibility, regulatory authorizations, food safety, and other factors? None of this is specified in the proposed regulations, thus giving the department an excess of discretion not permitted by the statute.

Response to O-42-6

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comments B-3-1 and O-49-6 with respect to exclusions pursuant to

Public Resources Code section 42060(b) being self-executing. CalRecycle also rejects this comment with respect to the assertions related to the content of notices, "nascent research and development efforts," and packaging that "technically or theoretically" would resolve legal conflicts for the reasons stated in response to comments B-3-1, O-39-1, and O-39-2. Regarding CalRecycle's discretion and its assessment of packaging that may resolve the cited legal conflicts, CalRecycle rejects this comment for the reasons stated in response to comment B-56-2, O-31-5

Comment O-42-7

We urge the department to revisit the exemption with these elements in mind, and in particular to provide safe harbors by way of example where a conflict would be established. Such examples could include that a direct conflict would exist if:
1. A federal agency has specifically reviewed the packaging material or packaging component and assessed whether the material ensures the safety of the food (examples include low-acid canned foods and acidified foods); or
2. The packaging is necessary to ensure that the food achieves one or more performance standards found in federal law, regulations, or guidance, including the adulteration standard, misbranding standard, slack fill standard, or the applicable standard of identity. “Necessary” means that alternative packaging materials or components are less optimal with respect to achieving the federal standard.

Further, the department should revise the proposed regulations to clarify how it intends to protect the highly confidential information, including trade secrets and confidential commercial information, that covered producers or other parties would submit to claim an exclusion. The type of information that would be submitted is highly sensitive research and development information and any type of leak or breach of the privacy of that data would have significant financial and competitive impacts on covered producers.

IDFA appreciates the opportunity to comment on this important rulemaking. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,
Danielle Quist
Vice President, Regulatory Affair and Counsel
International Dairy Foods Association

Response to O-42-7

Comment rejected. CalRecycle rejects the suggestion of establishing "safe harbors by way of example" because it is unnecessary. If any such safe harbor is appropriate, the processes set forth in section 18980.2(a)(2) will demonstrate as much. CalRecycle would then be able to highlight examples of packaging included in the database required under subparagraph (D). Interested entities will therefore have ready notice of the types of conflicts CalRecycle has recognized as justifying the exclusion. CalRecycle also declines to adopt the first example the commenter offers because it is logically flawed. The mere fact that an agency

has found that one packaging example satisfies federal requirements cannot logically mean that no other packaging does so and avoids violating the Act. CalRecycle declines to adopt the second example because it offers an ambiguous definition of "necessary" and is not supported by Public Resources Code section 42060(b). The definition is ambiguous with respect to "less optimal," which is essentially boundless without a list of discrete parameters. Moreover, it contradicts the plain meaning of "necessary": one option being "less optimal," but still reasonably possible, falls short of rendering another option "necessary." Most problematically, the commenter's suggestion is not supported by section 42060(b) because it would require packaging to be excluded even in circumstances where packaging is readily available on the market and does not raise any conflict with a federal requirement. In such instances, the exemptions based on section 18980.2.4 for unique challenges and health and safety risks provide relief. See, also, CalRecycle's response to comment B-3-1 regarding those exemptions.
Regarding confidential information, no revision is necessary to address the commenter's concern. As explained in response to comment O-30-3, the Public Records Act and the proposed regulations fully address that concern.

O-43: National Association of Wholesaler-Distributors (Brian Wild)

Comment O-43-1

By Electronic Submission
February 13, 2026

Dear Regulatory Analyst Richmond,

The National Association of Wholesaler-Distributors (“NAW”) respectfully submits these comments in response to the Department of Resources Recycling and Recovery’s (CalRecycle) proposed action to revise SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act permanent regulations.

About NAW and the Wholesale Distribution Industry

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes and national, regional, state, and local line-of-trade associations spanning the $8 trillion wholesale distribution industry that employs over 6 million workers in the United States. Approximately 35,000 enterprises with almost 150,000 places of business in all 50 states and the District of Columbia are affiliated with NAW.

Wholesale distribution is a vital business-to-business industry. Wholesaler-distributors purchase inventory (generally from manufacturers), store it in warehouses, break it down into the quantities their customers—generally retailers—require, and repackage and ship the products. Unlike warehouse logistics companies, which simply transport

another party's products, wholesaler distributors purchase inventory, take title to it, and then resell it. Most wholesaler-distributors are small- to mid-sized private companies with limited in-house legal or compliance resources. While they may not be consumer-recognized brand names like their manufacturing and retail partners, they play an essential role in the supply chain. Wholesale distribution contributes roughly one-third of U.S. gross domestic product, making it an irreplaceable link in our economy.

NAW's Comments in Response to CalRecycle Proposed Action

In March 2025, Governor Newsom declined to adopt CalRecycle's initial draft regulations citing concerns that the proposed action would impose excessive costs on businesses and consumers. Instead, the Governor called on CalRecycle to restart the regulatory process on SB 54. CalRecycle's revised draft regulations in August 2025 did not resolve these concerns. This
has led to CalRecycle proposing revisions to the regulations once again, offering a 15-day comment period. The issues of complexity and cost, as well as foundational concerns under the United States and California Constitutions, presented by SB 54 and the draft regulations remain the same today and cannot be resolved by another short comment period of narrow scope. This is why instead of finalizing regulations, CalRecycle should recommend to Governor Newsom and the California legislature that SB 54 should be reconsidered. In the revised proposed regulations, CalRecycle still has not provided clarity on many issues that are needed for businesses to understand their obligations and comply. Below is a list of common questions NAW continues to receive from its membership about implementation of SB 54. These questions bear on the fundamental problems with SB 54 and the implementing regulations, which warrant reconsideration by the legislature. However, CalRecycle should resolve these questions in the applicable provisions of the regulations to the extent it does not make such a recommendation.

1. Distributors cannot reasonably determine when they qualify as a producer given how goods move in interstate commerce and how secondary and tertiary packaging materials are added by various participants in supply chains. CalRecycle needs to provide clarity as to how the obligations on secondary/tertiary packaging applies.
2. What guidance or assumptions should be applied when it is not feasible to determine whether packaging added was necessary versus supplemental?
3. Will California include in final regulations a business-to-business exemption that has been identified in other state programs? For example, Colorado has exempted packaging materials used solely in transportation or distribution to non-consumers, and packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer. California should include such a provision.
4. Questions remain about how CalRecycle and the Circular Action Alliance will proceed with the fee schedule. On November 15, the Circular Action Alliance collected voluntary reporting from "producers" prior to the completion of final

regulations by CalRecycle defining what are covered materials. How will companies account for the fee variability year after year, considering the initial reporting was done before the final regulations were completed—and therefore before producer obligations could be accurately determined? Will there be a flat fee or simplified fee option for certain producers/distributors? Will there be a cap on total annual EPR fees a producer would be required to pay or on allowable increases in fees that a Producer Responsibility Organization may charge? Each of these questions impacts producers' ability to determine their obligations and comply with SB 54 and the implementing regulations.

5. How does a covered entity revise their submission when it believes there is overlap with other registered entities, or request corrections when it has identified errors?

There are seven states to date that have passed packaging Extended Producer Responsibility (EPR) laws. As implementation of these laws has begun it is clear there are serious practical and legal concerns with the laws. NAW filed a lawsuit in the United States District Court for the District of Oregon in response to Oregon's Plastic Pollution and Recycling Modernization Act going into effect. NAW's lawsuit challenges the constitutionality of Oregon's Plastic Pollution and Recycling Modernization Act. On February 6, 2026, the Court granted NAW's request for a preliminary injunction, finding that NAW had raised serious questions going to the merits of its claims, specifically regarding due process violations and interference with interstate commerce. In addition to these claims, many regulated entities have raised legal and practical concerns regarding their inability to determine what is needed to comply with Oregon's and Circular Action Alliance's implementation of the law. Important questions remain as to how the law applies to businesses and the fees that they are being charged.

Similar problems exist with SB 54, which are both structural and procedural. CalRecycle's revised regulations do not solve those problems. This is why California needs to reconsider its approach to a circular economy. Wholesaler-distributors primarily serve the business-to-business marketplace. Wholesaler-distributors offer warehousing, logistics and shipping from manufacturers and producers to retailers, contractors, and other businesses. As a result, they should not be classified as "producers" in SB 54. The current SB 54 scheme shifts the burden away from the key decision-makers and instead imposes mandates and fines on parts of the supply chain—such as wholesaler-distributors—that have little to no control over product packaging decisions, including how packaging is designed, how much is used, or how it can be reduced, reused, or recycled.

Under SB 54, companies are subject to a penalty of up to $50,000 per day for noncompliance. Even more concerning is that Circular Action Alliance, the recognized Producer Responsibility Organization in California, collected voluntary reporting information from employers despite that the CalRecycle's regulations have not been finalized. This data will be used as a baseline for source-reduction goals and fees for future years. Imposing reporting obligations before regulations are finalized—which will

be used to determine producers' compliance responsibilities—undermines accuracy, unnecessarily burdens businesses with vague standards, including wholesaler-distributors, and risks establishing arbitrary and faulty baselines that impede the program objectives and harm both producers and consumers.

NAW urges California to reconsider SB 54, while we are generally supportive of the goals of a circular economy this is not the solution.

Respectfully submitted,
Brian Wild
Chief Government Relations Officer
National Association of Wholesaler-Distributor

Response to O-43-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-44: China WTO/TBT National Notification & Enquiry Center (Jiao Yang)

Comment O-44-1

Comments from P. R. China on Notification G/TBT/N/USA/2088/Rev.1/Add.1

Notice of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear Sir or Madam,

We appreciate the opportunity to submit comments on the notified draft proposed by USA.

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of the comments by e-mail to tbt@customs.gov.cn.

Thank you very much in advance for USA taking into account comments from P.R. China. Your formal reply will be appreciated.

Best regards,

Jiao Yang
Deputy Director General
China WTO/TBT National Notification & Enquiry Center
No.20, Hepingli East Street, Dongcheng District, Beijing

Post Code: 100013
Tel: 86-10-57954605
Fax: 86-10-57954683
E-mail: tbt@customs.gov.cn

Comments from P. R. China on Notification
G/TBT/N/USA/2088/Rev.1/Add.1

Notice of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

The People's Republic of China appreciates USA for fulfilling the transparency obligation under WTO, as well as for the opportunities for other WTO Members to make comments on the notification G/TBT/N/USA/2088/Rev.1/Add.1. According to Article 2.9.4 of the WTO/TBT Agreement "without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account", China would like to put forward the following comments on the notified regulations and hope USA take these comments into consideration. The detail comments as follows:

1. Regarding to Section 18980.1(17) the definition of "producer" is too broad, which may increase import compliance costs and create trade barriers; recommend amendment.

The scope of "producer" in Section 18980.1(17), which references subdivision (w) of Section 42041 of the Public Resources Code, is overly broad. Specifically, when the brand owner or licensee is not located in the state, the person who imports covered material into the state for sale or distribution is deemed the producer. This shifts obligations—such as registration, participation in a Producer Responsibility Organization (PRO), regulation compliance, fee payment, and reporting—onto importers. Importers may refuse to import non-local products to avoid excessive administrative burdens. In contrast, California-based manufacturers can more easily fulfill these obligations directly. This responsibility-shifting mechanism may indirectly discriminate against imported products and increase the difficulty and cost of accessing the California market. Therefore, it is recommend referencing the EU regulations by introducing an "authorized representative" mechanism, allowing non-California brand owners to appoint, via written agreement, an authorized representative located in California to fulfill all producer responsibilities. Alternatively, establish a "compliance traceability exemption" whereby downstream importers are automatically exempt from relevant responsibilities if the upstream foreign producer has fulfilled compliance obligations through a PRO or directly with the Department. These measures would reduce the compliance burden on importers and eliminate potential trade barriers.

2. Regarding to Section 18980.1(4), each detachable component shall be considered individually which may lead to unnecessary compliance complexity; recommend amendment.

In the subdivision (B) of subparagraph (4), Section 18980.1(a), each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached. This requires multi-component imported packaging to be evaluated component-by-component for plastic source reduction, recycling rates, recyclability, and other indicators when entering California, significantly increasing compliance complexity and potentially creating trade barriers. Globally standardized packaging may need specific design or supply-chain adjustments for the California market. Therefore, it is recommended to align with the EU Packaging and Packaging Waste Regulation (PPWR) by permitting holistic assessment of packaging units to reduce unnecessary trade restrictions.

3. Regarding to Section 18981 that Third-party Certification Entity need to obtain approval from the California Department of Resources Recycling and Recovery (Department); recommend amendment.
Although international standards such as ISO/IEC 17065 are cited, section 18981(c) requires Third-party Certification Entity to request and obtain approval from the Department, and Section 18981(d) states that the approval is valid for only five years. This additional administrative approval procedure may cause delays for foreign Third-party Certification Entities already recognized under international standards to enter the California market, increasing the time and financial costs of regulation compliance for exporters using their services. It is recommended to add provisions stipulating “automatic approval” or a “registration system” for Third-party Certification Entities that have obtained recognition under the IAF/ILAC international mutual recognition agreement, to avoid creating unnecessary trade barriers for imported products and related entities (TBT 5.1.1)..

Response to O-44-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-45: RethinkWaste (i.e. South Bayside Waste Management Authority (Noam Elroi)

Comment O-45-1

February 13, 2026

Ms. Karen Kayfetz
Branch Chief, CalRecycle Product Stewardship Branch
1001 I Street
Sacramento, CA 95814
Emailed to: packaging@calrecycle.ca.gov

Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations – Comments on Draft Regulation Changes Released January 29, 2026.

Dear Ms. Kayfetz,

On behalf of RethinkWaste, we appreciate opportunity to participate in CalRecycle's regulatory process to aid the implementation of Senate Bill 54 (Allen), also known as the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Below are comments on Draft Regulations released January 29, 2026.

RethinkWaste (i.e. South Bayside Waste Management Authority) is a joint powers authority of eleven public agencies (Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo and West Bay Sanitary District) in San Mateo County. Currently, we serve approximately 420,000 residents and 11,000 businesses and have been a leader in the delivery of innovative waste reduction and recycling programs since our formation in 1982. Additionally, we own and manage the 16-acre Shoreway Environmental Center facility, located in San Carlos, which receives, handles and transfers all the collected trash, recyclable and compostable materials in our service area (about 440,000 tons per year).

We are pleased to see the amendments to Section 18980.2 on categorically excluded materials. Specifically, we appreciate the clarification that only packaging which cannot be made compliant with both SB 54 and mandatory Federal rules, regulations, or guidelines, may be categorically exempted. This change brings the scope of covered materials more in line with the original intent of the statute. However, this same type of clarification— that only conflicts with mandatory USDA and FDA requirements trigger exclusions— should be applied across section 18980.2 wherever mentions of legal conflict arise.

Further, clarification that repeat applications for exclusion do not automatically trigger removal from the covered materials list is a welcome fix to a potential loophole. This is an important limit on an already generous exclusion timeline.

> **Response to O-45-1**
>
> CalRecycle rejects this comment for the reasons provided in response to comment B-55-1, which makes the same suggestion as does this comment.

Comment O-45-2

Although we appreciate the improvement made to the scope of covered materials, we are disappointed to see the many critical issues for local governments outlined in our October 2025 and June 2025 letters remain unaddressed. These are summarized briefly below, but can be found in full in our October 2025 letter.

§18980.1(a)(2)
Alternative collection could undermine local franchise systems, MRF financing, diversion tracking, and bond obligations unless approved by and run in coordination with local governments.

§18980.8(g)(1)
Excluding reimbursement for pre-2023 investments contradicts SB 54 and unfairly penalizes early adopters whose existing infrastructure supports new requirements.

§18980.8(g)(4)
Unclear reimbursement timelines create financing difficulties; regulations should set firm deadlines so jurisdictions can plan and issue debt responsibly.

§18980.8(g)(6)
Performance-based reimbursement conflicts with SB 54's mandate to fully reimburse costs and risks leaving jurisdictions unpaid for good-faith investments.

§18980.8(h)(4)(E)
Splitting arbitration costs and legal fees disadvantages public agencies and undermines SB 54's intent to make jurisdictions whole.

§18980.11(a)&(b), §18980.11.1
Key compliance terms like "collects" and "violation" are unclear, and regulations should explicitly protect jurisdictions from penalties due to lack of end markets.

§18980.11(a)
Jurisdictions need funding and clarity before collection obligations begin; a one-year phase-in is needed after PRO plan approval.

§18980.13(b), §18980.13.1
Proposed penalties on jurisdictions are excessive and misaligned with SB 54; enforcement should be graduated and focused on compliance assistance first.

We take very seriously our mission to provide innovative waste reduction and diversion management through responsible and cost-effective programs that promote environmental sustainability in our communities. We understand how important these regulations are to the successful implementation of SB 54, and the comments made above are done so in the spirit of helping all parties achieve those goals. We greatly appreciate your consideration of our comments, which were all made with the ratepayers of our service area in mind.

Sincerely,
Joe La Mariana
Executive Director

Response to O-45-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

O-46: Western Growers Association (Gail Delihant)

Comment O-46-1

February 13, 2026

Submitted Electronically via: https://calrecycle.commentinput.com/?id=3ikJbFpZN

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: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period

Dear Ms. Richmond:

Western Growers Association appreciates the opportunity to provide comments to CalRecycle on the proposed Senate Bill SB 54 (Allen, 2022) ("SB 54" or the "Act") Plastic Pollution Prevention & Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026 ("Draft" or "Draft Regulations"). Western Growers is an agricultural trade association headquartered in California. Western Growers' members are small-, medium-, and large-sized businesses that produce, pack, and ship fruits, vegetables, and tree nuts from our home states of California, Arizona, New Mexico, and Colorado. Western Growers' members account for roughly half the annual fresh produce grown in the United States, providing consumers with healthy, nutritious food. Unlike other packaged products, fresh produce is alive, and packaging allows the preservation of food safety and quality from farm to fork. Likewise, proper packaging is necessary to ensure consumer safety and satisfaction for meat and dairy products.

Western Growers supported the August 22, 2025, SB 54 Draft Regulations as the language offered a viable and clear framework for compliance for fresh produce packaging with the ability to apply for a categorical exclusion, as permitted by Public Resource Code section 42060(a)(3)- (4) and as required by section 42060(b), in written comments submitted on October 7, 2025.1 While we appreciate the Department's continued efforts to develop workable and effective regulations to implement SB 54, the revised language in Section 18980.2 Categorically Excluded Materials is deeply

concerning. The January 29, 2026, revisions introduce requirements that are effectively impossible for fresh produce and meat packaging to satisfy. They would eliminate the workable framework CalRecycle proposed in August 2025 and replace it with an exclusion pathway that is effectively unattainable, raising serious concerns regarding the ability of regulated entities to comply.

1 Western Growers' October 7, 2025 written comments detailed the importance of specific packaging for fresh produce and the current state of fresh produce packaging and provided links to over fifty relevant documents including reports, studies, publications, and informational resources pertaining to fresh produce packaging, GHG emissions, and food safety requirements.

Response to O-46-1

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-1, which is substantively identical to this comment.

Comment O-46-2

The Proposed Revisions to Section 19890.2 Would Impermissibly Modify SB 54's Statutory Requirements

SB 54, in Public Resources Code section 42060(b), provides that CalRecycle must ensure that its implementing regulations "consider guidelines … issued by the United States Food and Drug Administration [FDA] and the United States Department of Agriculture [USDA]," "do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture," and "consider requirements imposed by other California state agencies." CalRecycle is expressly prohibited from imposing any requirement in direct conflict with "regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities, requirements for microbial contamination, structural integrity, or safety of packaging under the Federal Food, Drug, and Cosmetic Act [FDCA] (21 U.S.C. Sec. 301 et seq.), 21 U.S.C. Sec. 2101 et seq., [or] the federal FDA Food Safety Modernization Act [FSMA] (21 U.S.C. Sec. 2201 et seq.)…."

CalRecycle is proposing to unilaterally limit this restriction on its regulatory authority by reading the qualifier "mandatory" into the law. This proposal conflicts with SB 54's limitations on CalRecycle's regulatory authority because guidelines, by their nature, do not impose binding obligations. FDA and USDA guidance documents are science-based standards that, based on current scientific evidence, guide development of fresh produce and meat packaging systems that comply with mandatory federal food safety statutes and regulations, including requirements for microbial contamination, structural integrity, or safety of packaging under FDCA and FSMA. CalRecycle's proposal is based on the incorrect assumption that it can impose regulatory requirements that conflict with FDA or USDA guidance (except for nonexistent "mandatory" guidance). CalRecycle must correct this error by removing the qualifier "mandatory" from Section 19890.2 in each place it appears.

Response to O-46-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-2 which is substantively identical to this comment.

Comment O-46-3

CalRecycle Has Proposed an Exclusion Pathway that Is Impossible to Satisfy

CalRecycle's proposal requires proof that no alternative packaging or packaging redesign would satisfy all applicable mandatory standards. This requires entities to prove a negative and, as a result, is impossible to satisfy. Film plastic and plastic clamshell packaging comply with federal guidance and federal legal requirements. They are highly effective at preventing microbial contamination, maintaining product integrity, and extending shelf life, while aligning with FDA guidance and established industry standards. No commercially viable alternative currently exists for film plastic packaging that provides equivalent protection, shelf life, and control contamination for fresh produce and meat products in accordance with FDA food safety guidelines. To satisfy CalRecycle's proposed criteria for a categorical exemption, an entity would have to identify every possible alternative packaging, including alternatives that clearly do not comply with federal law and guidance, and every possible packaging redesign (i.e., alternatives that have not yet been developed). It simply is not reasonably possible for an entity to identify and evaluate all possible alternatives. As structured, the exclusion pathway is illusory rather than attainable.

Furthermore, attempting to identify and evaluate all possible alternatives would be extremely costly for California's agricultural community, causing consumer food costs to increase in conflict with California's policy to ensure every Californian has equitable access to safe, healthy, and affordable food. The timeframe to develop new food packaging materials is substantial. Products must undergo rigorous extraction studies and testing to determine compliance with the Code of Federal Regulations (CFR), a process that can take years. The resulting data must then be submitted to the FDA for review, a process which can take several additional years. This does not include the time needed to scale production to a commercially viable level for use across the grower community. Scaling production of any new materials will take billions of dollars and decades to achieve. Even when packaging materials are already FDA compliant, development timelines often span multiple years to complete. This phase between lab validation and market-ready production is very high-risk and many startups fail during this phase due to misjudged scaling, funding gaps, and operational hurdles. And, at the end of this very expensive and time-consuming process, there is no guarantee that the alternative evaluated will be viable or even approved by FDA or CalRecycle. An ever-changing regulatory landscape adds to this uncertainty. These additional costs would be passed through to California consumers, significantly increasing the cost and limiting the availability of fresh and healthy food.2 And, as this lengthy process plays out, entities would be stuck – unable to obtain a categorical exclusion and unable to comply with SB 54.

As a practical matter, no grower, packer, or shipper of fresh food packaging will be able to provide the information required by Section 18980.2(a)(2)(B) and, therefore, no packaging will ever qualify for the exclusion. Neither SB 54 nor CalRecycle's implementing regulations can require this impossibility.

Response to O-46-3

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-3, which is substantively identical to this comment.

Comment O-46-4

CalRecycle Has Not Adequately Evaluated the Additional Economic and Climate Impacts of the Proposed Changes to Section 19890.2

The Department has also not adequately considered the compliance costs, legal risks, and market impacts created by the revised language. Fresh produce producers have advised that they will be unable to sustain the program fees imposed by the regulation and will be unable to meet the required recycling rates for fresh produce packaging. The Legislature included several key provisions in SB 54 that are intended to reduce the impact of the law on the agricultural community, to avoid conflicts with federal laws, regulations, and guidance that protect food safety and decrease spoilage, to reduce greenhouse gas (GHG) emissions associated with food waste, and to reduce the extent to which implementing SB 54 may make it more difficult for disadvantaged communities to afford healthy and safe food.

One of the profoundly adverse consequences of the SB 54 regulation as written, in addition to wasting food, is the increase in GHG emissions that would be caused by increasing food waste. California has long been a champion for developing programs aimed at reducing GHG emissions, including SB 1383. A progress report from the California Compost Coalition on the state's Shortlived Climate Pollutant Regulation (SB 1383) determined that instead of achieving a reduction in commercial organic waste disposal, there was a 27% increase in 2022. 3 In addition to not meeting the reduction goal, the cost associated with implementing SB 1383 doubled since the law was first passed in 2020. A 2023 report from the Little Hoover Commission, a California state oversight agency, called for a pause on implementing SB 1383, allowing more time for education and for jurisdictions around the state to create local organics recycling systems. 4 CalRecycle was not able to achieve the SB 1383 mandated 75% reduction by 2025 goal, which in comparison to SB 54 is an order of magnitude smaller and was still impossible to achieve with the time and financial resources allotted.

SB 1383 also required the California Air Resources Board (CARB) to develop the broader Shortlived Climate Pollutant (SLCP) Reduction Strategy. CalRecycle's organic waste regulations are the primary mechanism used to hit the "waste sector" portion of CARB's strategy. Therefore, CalRecycle's data feeds directly into CARB's "Scoping Plan," which is the state's master plan for reaching carbon neutrality. The impact of SB 54 on GHG emissions from food waste will greatly hinder compliance with these goals.

The Oregon State Department of Environmental Quality (DEQ) performed a study to assess the connection between food waste and packaging. The report's central thesis is that packaging should be viewed as a tool to protect the "embedded" environmental resources of food.5 Among their many findings, they state, "Packaging plays an important role in protecting food from damage and contamination and extends the useful life of food items on the retail shelf and at home, thus potentially reducing wasted food and its environmental impacts." In assessing the relationship between food waste and GHG they concluded, "In general, the GHGE [Greenhouse Gas Emissions] associated with manufacturing food packaging is typically small relative to the emissions associated with producing and processing the food itself". 5

The report argues that for fresh produce, the "net environmental benefit" of packaging is high because produce is resource-intensive to grow but very easy to damage. For agricultural products with higher GHG emissions resulting from production such as meats, fish, and dairy products, the report notes that the environmental benefits of spoilage-preventing packaging is even more significant. In short, the most "sustainable" package is the one that ensures the food actually gets eaten. The Oregon DEQ report concludes that the most effective way to reduce the environmental footprint of our food system is prevention. Because packaging is a primary tool for prevention, "more" or "better" packaging is often the greenest option available.

Compliance with SB 54 regulations as currently drafted would require substantial and uncertain expenditures for research, testing, and piloting of alternative materials that cannot provide equivalent performance in food safety and shelf life. Material cost data indicate that conventional PET clamshells cost approximately $0.08–$0.12 per unit, while recycled PET alternatives cost approximately $0.15–$0.20 per unit, an increase upwards of 150%, and compostable alternatives can cost $0.25–$0.35 per unit or more, an increased upwards of 338%. Similar price differentials for salad and baby carrot bags place significant incremental cost burdens on producers and consumers.

Multiple peer-reviewed life-cycle assessments (LCAs) demonstrate that plastic packaging frequently has a lower full life-cycle climate impact than alternative materials. In a comprehensive analysis across multiple applications, plastic packaging exhibited 10% to 90% lower greenhouse gas emissions than comparable non-plastic alternatives on a functional basis, driven primarily by lighter weight and lower production and transport energy requirements. More targeted LCA data show that polyethylene packaging typically requires 4–5 times less material than many alternatives and has roughly 50% lower life cycle GHG emissions, which is consistent with the weight-efficiency advantages of plastics in produce packaging applications such as clamshells, salad bags, and baby-carrot bags. Even where non-plastic recyclables like corrugated fiber perform well in certain impact categories, they can weigh up to 4 times more than plastic containers, substantially increasing freight emissions and transport costs

2 The current industry analysis costs for a small to medium size business range from $150,000-$500.000 depending on the complexity of the packaging.

3 California Compost Coalition. "The SB 1383 Progress Report", 2022. Available at: https://californiacompostcoalition org/mobius/wp-content/uploads/2022/01/20-07-Newsletter-SB-1383- Progress-Report pdf
4 The Little Hoover Commission. "Report #274: Reducing California's Landfill Methane Emissions: SB 1383 Implementation". 2023. Available at: https.//lhc.ca.gov/wp-content/uploads/Reports/274/Report- 274.pdf
5 State of Oregon Department of Environmental Quality (DEQ). "Food Product Environmental Footprint Literature Summary: Packaging and Wasted Food", 2017. Available at: https://www.oregon.gov/deq/FilterDocs/PEF-Packaging-FullReport.pdf

Response to O-46-4

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-4, which is substantively identical to this comment.

Comment O-46-5

CalRecycle Standardized Regulatory Impact Assessment (SRIA) Revision Required

The modifications to proposed § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated SRIA under California Government Code § 11346.3. Rather than minor technical adjustments suited for a 15-day comment period, these changes fundamentally alter the scope, burden, and accessibility of the categorical exclusion for food and agricultural commodity packaging.

Implementing these provisions will force agricultural businesses to engage legal experts to navigate intricate federal-state regulatory friction and commission packaging engineers to assess the viability of hypothetical alternatives. This constitutes a sharp escalation in compliance expenditures that the Department's initial economic assessment failed to account for.

Response to O-46-5

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-5, which is substantively identical to this comment.

Comment O-46-6

Section 18980.2.4 Does Not Provide a Feasible Alternative Pathway to Exempt Food Packaging Designed to Comply with Federal Laws, Rules, and Guidelines

The proposed regulations, as drafted, are economically infeasible and not practicably achievable for many covered entities, and the discretionary exemption pathway under 18980.2.4 fails to mitigate these fundamental challenges. Section 18980.2.4 presents challenges for Western Growers' members that are as significant as, and in many respects, more burdensome than those in the proposed categorical exclusion. The exemption process only provides a two-year reprieve from complying while still paying the highest fees. The language is permissive regarding how the Producer Responsibility Organization (PRO) evaluates applications and retains discretion over whether to

advance the application to the Department. As written, there is little incentive for the PRO to meaningfully consider exemption applications. We believe the language should be changed from “may” to “shall”. While the language allows for the possibility to extend the exemption to five years, this pathway is administratively burdensome and costly: producers must prepare detailed applications demonstrating functional constraints, document lifecycle and material assessment data, and navigate discretionary approval and periodic renewal. Typical administrative costs per SKU are $21,000–$34,500, exclusive of material cost differentials, reporting, and compliance fees. For mid-size producers with multiple SKUs (clamshells, salad bags, baby-carrot bags), these costs could easily exceed $400,000– $700,000 solely to pursue exemptions.

Considering compounding issues such as higher material costs, increased transport and operational costs, food waste resulting in lost product, elevated life-cycle GHG emissions, and substantial administrative burden, the exemption pathway under Section 18980.2.4 does not provide a workable solution, particularly for small- and mid-sized producers.

Response to O-46-6

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-6, which is substantively identical to this comment.

Comment O-46-7

Rather than attempting to meet a burdensome standard that carries significant economic and legal risks, **the foreseeable outcome will be the withdrawal of affected fresh produce and meat products from the California market**. This outcome would undermine food access and environmental objectives. Sadly, it will make unavailable whole categories of convenient and nutrient-rich produce products to Californian families.

Fresh produce packaging accounts for less than 3.27%6 of the estimated total Covered Material Category (CMC) proportion of California’s statewide disposal.7 To address this small percentage, CalRecycle’s proposed regulations impose astronomical costs on the state’s agricultural industry. CalRecycle’s Revised Standardized Regulatory Impact Assessment (SRIA) published June 2025, states that the average “large producer”, which is any producer that makes a penny more than one million dollars in gross income, that the average annual SB 54 regulatory cost for compliance is $406,504.8 Without adjusting federal and state taxes, a business could pay 40.7% of its gross annual income to comply with one regulation. The proposed exclusion processes add significantly to this regulatory and financial burden, which is not warranted by the scope of the issue and not necessary to satisfy the purpose and intent of SB 54.

6 CalRecycle. “What’s in California Landfills: Measuring Single-use Packaging and Plastic Food Service Ware Disposed (2025) Final Findings”. 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Publications/137559. CMC report data included in our calculation: CMC 24_P36P (1.62%), 24_P16P (0.73%), 24_P38P (0.51%), 24_P46P (0.15%), 24_P10P (0.12%), 24_P22P (0.08%), 24_P45P (0.04%), and

24_P5P (0.02%). Noting, these CMC's include packaging that are not used by the agricultural industry; therefore, agriculture's packaging is less than 3.27%. For example, CalRecycle states that 24_P16P total estimated proportion of total statewide disposal of 0.73% includes bread bags, candy wrappers, and citrus mesh bags.
7 CalRecycle. "What's in California Landfills: Measuring Single-use Packaging and Plastic Food Service Ware Disposed (2025) Final Findings. 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Publications/137559
8 CalRecycle. "Proposed Regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act Standardized Regulatory Impact Assessment (SRIA)", 2025. Available at: https://www2.calrecycle.ca.gov/Docs/Web/131172

Response to O-46-7

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-7, which is substantively identical to this comment.

Comment O-46-8

In conclusion, we align with and support the other agricultural coalition letters as well as the letter submitted by Abby Taylor Silva at Kahn, Sores, and Conway, and hereby incorporate and reaffirm its contents in full and reiterate the following:

"The categorical exclusion provisions in proposed § 18980.2(a)(2) must be substantially revised to comply with multiple statutory requirements that govern California rulemaking.

First, the regulations must align with PRC § 41821.5(c)'s requirement for "reasonable and necessary" implementation practices that do not impose unreasonable burdens, and with California Government Code § 11349.1(c) and (d)'s requirements for clarity and consistency with enabling legislation. The Department has exceeded its statutory authority by inserting the "mandatory" qualifier throughout proposed § 18980.2(a)(2), as PRC § 42060(b)(2) does not limit the categorical exclusion to "mandatory" federal requirements. Instead, it broadly references "regulations, rules, or guidelines" that create conflicts. This unauthorized narrowing must be corrected to reflect the statute's actual language and the Legislature's intent to provide a workable exclusion for packaging subject to federal food safety requirements.

Second, the extensive revisions to § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated Standardized Regulatory Impact Assessment (SRIA) under California Government Code § 11346.3. The dramatic increase in compliance costs, including the necessity for agricultural producers to retain legal counsel and packaging engineers to navigate the regulation's impossible evidentiary burdens, was not contemplated in the Department's original economic analysis and must be quantified to identify the least burdensome regulatory alternative as required by statute.

Third, the current draft fails California Government Code § 11349(c)'s requirement that regulations be written "so that the meaning of regulations will be easily understood by

those persons directly affected by them," particularly with respect to the undefined terms "all applicable mandatory standards," "any law," and the conflicting standards of "reasonably possible" versus "not possible." The Department must substantially revise proposed § 18980.2(a)(2)(B) to provide clear definitions of key terms, explicit criteria for determining what constitutes sufficient evidence, and objective standards that will allow regulated entities to understand their obligations and the Department to apply the regulation consistently.

Finally, all regulatory amendments must align with California Government Code § 11346.3's requirement that regulations be technically feasible and PRC § 41821.5(c)'s mandate to consider compliance costs and technical feasibility. The Department must therefore reincorporate "reasonably possible" consistently throughout § 18980.2(a)(2), ensuring internal consistency with the parent statutory provision and alignment with governing statutory requirements for feasibility and practicability, rather than imposing an absolute impossibility standard that no regulated entity can meet..."

Response to O-46-8

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment O-33-8, which is substantively identical to this comment.

Comment O-46-9

Western Growers and the organizations below respectfully urge CalRecycle to revise the proposed Section 18980.2(a)(2), reverting to the August 22, 2025, draft regulatory text as the baseline and restore a clear, workable categorical exclusion that recognizes federal food safety packaging guidance as the accepted compliance pathway and the essential role of packaging in food safety, package integrity, waste reduction and greenhouse gas mitigation.

We appreciate your continued engagement in this issue and are happy to provide any additional information that would be helpful.

Sincerely,

Gail Delihant
Senior Director, California Government Affairs
Western Growers Association

On behalf of the following organizations:

Agricultural Council of California, Emily Rooney
California Cattlemen's Association, Kirk Wilbur
California Date Commission, Kristy Kneiding
California Fresh Fruit Association, Daniel Hartwig
California Strawberry Commission, Rick Tomlinson
California Tomato Growers Association, Mike Montna
California Women for Agriculture, Lora K. Daniels

Grower-Shipper Association of Central California, Christopher Valadez

Response to O-46-9

Comment rejected. No response to this portion of the commenter's submission is necessary because it only summarizes the objections and recommendations already presented in comments O-46-1 through O-46-8, to which CalRecycle has responded individually.

O-47: California Cannabis Industry Association (Caren Woodson)

Comment O-47-1

February 13, 2026

Csilla Richmond
Department of Resources Recycling and Recovery,
Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95814
Submitted Electronically

Re: SB 54 PROPOSED REGULATION TEXT – 15 DAY COMMENTS
Plastic Pollution Prevention and Packaging Producer Responsibility Act

On behalf of the California Cannabis Industry Association (CCIA), representing licensed operators across the state's supply chain, we respectfully submit these comments regarding the proposed "15-Day Changes" to the SB 54 regulations.

We commend CalRecycle for the revisions introduced in the 15-day text, specifically the recognition that food and agricultural producers require flexibility when environmental mandates conflict with federal safety laws. The introduction of the streamlined "*Notice of Exclusion*" process for these sectors is a prudent policy adjustment that prioritizes public health.

However, the current draft creates an unintentional regulatory gap. It acknowledges safety conflicts arising from *federal* mandates (USDA/FDA) while overlooking identical safety conflicts arising from *state* mandates (Department of Cannabis Control).

Cannabis operators are bound by strict, state-mandated packaging regulations, including but not limited to child-resistant packaging (CRP), tamper evidence, and microbial purity standards, all of which are functionally equivalent to the federal pharmaceutical and agricultural rules you have already accommodated. To ensure equitable treatment and protect public safety, we respectfully request that CalRecycle extend the "Notice of Exclusion" framework to include conflicts with state-mandated cannabis safety regulations.

Specifically, we propose the following three amendments to the final text:

1. PARITY FOR STATE-MANDATED SAFETY CONFLICTS (SECTION 18980.2(A)(2))

The revised Section 18980.2(a)(2) wisely permits producers to submit a simple "Notice of Exclusion" if SB 54 compliance conflicts with "mandatory regulations, rules, or guidelines issued by the USDA or FDA." This allows commodities like eggs, poultry, and fresh produce suppliers to bypass the burdensome "Exemption Application" process when safety is at stake.

Cannabis producers face the exact same "impossibility of compliance." We are required by the Department of Cannabis Control (DCC) to use packaging that ensures:

-- Child Resistance: Certified under the Poison Prevention Packaging Act of 1970.
-- Contaminant Protection: Rules requiring a minimum 4-mil thickness and heat seals to prevent microbial impurities, mycotoxins, and foreign material contamination.
-- Opacity and Tamper Evidence: Strict statutory requirements that often necessitate multi-layered, non-recyclable materials.

State-mandated health and safety regulations should be afforded the same deference as federal regulations. A cannabis operator should not be forced into a discretionary, expensive "Exemption Application" process for adhering to state law.

We request that Section 18980.2(a)(2) be amended to recognize conflicts with "*mandatory regulations, rules, or guidelines issued by the USDA, FDA, or the Department of Cannabis Control.*"

Response to O-47-1

Comment rejected. The statutory authority for section 18980.2(a)(2) lies in Public Resources Code section 42060(b), which concerns restrictions under federal laws, not state mandates. The commenter is incorrect that cannabis producers in California face the "exact same 'impossibility of compliance'" because the challenges cited for cannabis packaging arise under state law, not federal laws. Federal law raises fundamentally different legal problems due to the overlapping jurisdiction inherent in the federal system, where federal law might render state law unenforceable. In contrast, exemptions under section 18980.2.4 provide relief when state law requirements constitute a "unique challenge." Notably, section 18980.2.4(c)(4)(A) acknowledges that such a challenge can be legal in nature, and 18980.2(f)(2)(A) requires that compliance be "impractical"; it does not apply the same "not reasonably possible" standard of section 18980.2(a)(2). Finally, the commenter's concern over the expense of the "Exemption Application" is misplaced because section 18980.2.7 accounts for the possibility that cannabis packaging presents categorical obstacles that render packaging impractical due to specific restrictions under California law. CalRecycle can issue

an exemption to that entire class of packaging.

To the extent the commenter's objection is that cannabis packaging should not be "covered material" when it is exempted due to unique challenges, CalRecycle rejects that objection. There is no basis for treating any particular state law obstacle different than all other state law obstacles. If exemptions resulted in packaging not being "covered material," granting them would imperil the success of the Act by removing incentives for transitioning to compliant packaging and eliminating reporting of such packaging, which would distort recycling rates and interfere with assessing whether the Act is achieving its core aim of eliminating single-use packaging that is not recyclable or compostable. While that core aim must yield to federal conflicts due to the mandate of Public Resources Code section 42060(b), there is no basis for understanding the Legislature's intent for California's own laws to undermine the Act in the same manner.

Comment O-47-2

2. RECOGNITION OF CANNABIS AS A "MEDICAL PRODUCT" FOR SAFETY EXEMPTIONS

SB 54 already exempts "Medical Products," "Infant Formula," and "Medical Food" because their packaging is strictly regulated for quality and sterility. Cannabis products in California function similarly: they are tested for heavy metals and residual solvents, and they are legally procured for the diagnosis, mitigation, and treatment of medical conditions.

Cannabis fits the functional definition of a "drug" as described in 21 U.S.C. § 321(g) (articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease). Furthermore, our packaging serves a critical medical safety function: preventing accidental ingestion by minors.

The regulations should acknowledge that packaging used to secure psychoactive products against child access serves a "health and safety" function that outweighs source reduction goals.

We request confirmation in the Final Statement of Reasons that cannabis packaging, which must meet DCC Child-Resistant standards, will be evaluated and exempted under the same "health and safety" standards (Section 18980.2.4) applied to pharmaceutical and medical products.

3. "DE MINIMIS" CLASSIFICATION FOR DOSING COMPONENTS (SECTION 18980.2.2)

To ensure patient safety and precise dosing, many cannabis products utilize small, specialized components—such as calibrated droppers, liners, and seals. These components are critical for product integrity but are often too small or complex to be recycled.

Section 18980.2.2(b)(2) revises the definition of *de minimis* to include components where exclusion "enables usage of recyclable... packaging." If producers can exclude the weight of these small dosing mechanisms, the primary container can often be transitioned to compliant materials. Without this exclusion, the entire package fails, forcing the producer into non-compliance despite good faith efforts.

We urge CalRecycle to categorically designate standard dosing and safety

mechanisms used in cannabis packaging (e.g., dropper bulbs, dose-measuring caps) as *de minimis* components.
The California cannabis industry is unique: it operates without federal recognition but adheres to safety standards that mirror the rigor of federal pharmaceutical and agricultural laws.
We simply ask that CalRecycle harmonize the regulations to treat state-mandated safety conflicts with the same procedural efficiency as federal ones. By allowing cannabis licensees to utilize the "*Notice of Exclusion*" process for DCC conflicts, you protect public health, ensure industry viability, and uphold the intent of SB 54.
Sincerely,
//
Caren Woodson
President, Board of Directors
California Cannabis Industry Association
president@cacannabisindustry.org

Response to O-47-2

Comment rejected. In the first part of the comment ("2. Recognition of Cannabis a s a 'Medical Product' for Safety Exemptions"), this comment addresses whether cannabis is a "drug" and asserts that it should be exempted under section 18980.2.4 because the function of cannabis "outweighs source reduction goals." The comment therefore does not concern or request a change to section 18980.2(a)(2) or any other provision revised in the 15-Day Changes, and no further response is required. For the same reason, no response is necessary to the second part of this comment, regarding the "de minimis" provisions in section 18980.2.2(b)(2). Section 18980.2.2(b)(2) has not been revised in the 15-Day Changes.

Lastly, no response is required to the final paragraph of this comment because it only reiterates the issues raised in this comment and O-47-1, which CalRecycle has responded to separately.

O-48: Biodegradable Products Institute (BPI) (Ismat Yassin)

Comment O-48-1

February 13, 2026

California Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street Sacramento, CA 95814

Re: SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations

To CalRecycle,

The Biodegradable Products Institute (BPI) is North America's leading organization representing certified compostable materials, products, and packaging, with over 600 member companies worldwide and tens of thousands of certified products.

BPI is the foremost association for the circular bioeconomy who convenes the compostable product value chain, and facilitates inclusive discourse to create consensus on actionable, science-backed standards, claims, and policy. Our certification program has verified tens of thousands of items using ASTM standards as a baseline, with additional requirements to prohibit PFAS, promote clear labeling, and sensible eligibility criteria, all to help to keep organic waste out of landfills.

As an active stakeholder in the development of Senate Bill 54 and champion of its goal to make all covered products and packaging in California reusable, recyclable, or compostable by 2032, we thank you for this opportunity to provide comments again on the proposed regulations. As stated in our previously submitted comments, we continue to find the validity of the proposed regulations to be inconsistent with both statutory text and existing California law related to compostable products in PRC Chapter 5.7.

We also highlight that, despite CalRecycle's duty to protect human health and the environment, several provisions of the proposed regulation are inconsistent with available scientific evidence. Considering BPI's extensive experience in the technical field as set forth above, we ask CalRecycle to meaningfully address BPI's comments on the proposed regulations. See, *e.g., Gov't Code § 11346.9(a)(3); Sims v. Dep't of Corr. & Rehab., 216 Cal. App. 4th 1059, 1071–74 (2013) (regulations invalidated for "substantial failure" to comply with APA procedural duties, including failure to address alternatives).*

Section 18980.1 (Definitions)

Once again, we request the addition of a separate definition of "polymers" and reiterate the following:

The definition of "polymer" should align with ASTM D883 to reflect both the intent and language of the existing statute. ASTM D883 is already incorporated by reference in ASTM D6400 and ASTM D6868, and its use here would provide clarity and consistency across the regulatory framework. It is particularly important that CalRecycle define "polymers" separately from "plastics" for the purposes of this regulation. Plastics are articles made from a subset of polymers, while polymers themselves include a broad class of long-chain molecules found in both synthetic and naturally occurring materials.

This distinction is especially important in the context of fiber-based products. While cellulose and other plant-derived materials are themselves polymers, the relevant regulatory question is not whether fiber contains naturally occurring polymers, but whether products contain incorporated or added polymers - such as binders, coatings, wet-strength agents, or other modifiers - that must be evaluated to ensure compost

safety. This is precisely why state law requires certification to ASTM standard specifications, even if these are small amounts: for consistent performance-based criteria, including appropriate tests and limits to confirm that the final product successfully disintegrates and does not introduce toxic effects into the resulting compost.

Without a clear definition of "polymer," the narrow exemption established in statute (PRC 42356.1(d)) risks becoming significantly broader than intended. Historically, the exemption for paper and fiber-based products without polymers has been understood to apply only to an extremely limited subset of products composed solely of uncoated, untreated fiber - items such as wooden stir sticks. If "polymer" is left undefined, products containing incorporated synthetic components could qualify for exemption despite containing materials that have not been evaluated under ASTM compostability standards, violating California's laws under PRC 42355 – 42358.5.

It is also important to clarify that ASTM certification addresses more than the rate of composting. The relevant ASTM standard specifications include requirements for biodegradation, disintegration, ecotoxicity, and chemical constituents. These criteria are essential to protecting the quality and safety of finished compost. The presence of incorporated polymers - regardless of whether the base substrate is plastic or fiber - can influence all of these outcomes and therefore requires appropriate validation.

Certification bodies such as BPI already require testing for many paper and fiber-based products, including uncoated items, precisely to prevent persistent or toxic components from being introduced into compost streams. This approach reflects a longstanding understanding and agreement that the presence of incorporated polymers or additives, even in fiber-based products, must be evaluated to ensure the integrity of the composting process and the safety of the resulting soil amendment.

As written, the proposed interpretation may unintentionally create differing validation expectations across material types by allowing certain products containing incorporated polymers to bypass ASTM-based evaluation requirements. This could encourage material substitution based on regulatory classification rather than demonstrated compost performance, and may allow untested materials to enter composting systems. Ensuring that the definition of "polymers" is clear, consistent, and appropriately applied will help maintain a performance-based, material-neutral framework that protects compost quality and supports fair and consistent implementation of the statute.

Moreover, we already know that products containing non-biodegradable polymers end up in composting facilities due to depackaging practices that create persistent microplastics, filled with untested and unknown components, and threatening the integrity of soil in California is at risk. As such, the proposed regulations need to include a specific definition of "polymers" and the definition of "plastics or polymers" should refer to this definition of polymers to differentiate between compliant products that support high quality compost and the untested, persistent, and toxic products that threaten it.

We reiterate: rationale previously provided by the department in the ISOR document misunderstands the statute in multiple ways. First, the need to test and certify products with polymers is not limited to the "rate of composting." The relevant ASTM standard specifications include requirements for ecotoxicity and constituents, in addition to biodegradation and disintegration, all of which are necessary to protect the quality of the resulting compost. Furthermore, the claim that fiber is itself a polymer does not change the need for other "incorporated" polymers to be tested. It has always been intended and understood that the exemption for paper and fiber-based products without polymers applies only to an extremely narrow subset of products such as wooden stir sticks. This is also why certification entities like BPI require testing for countless uncoated paper and fiber products, to provide demonstrable evidence to an agreed upon standard that the item is safe and suitable for being introduced into compost. CalRecycle has ignored the clear purpose of the law for the purpose of drawing an arbitrary distinction between product types.

Section 18980.2. (Categorically Excluded Materials)

Section 18980.2.2 (Exclusion of Certain Types of Packaging)
We remain concerned about the proposed exclusions for "de minimis" elements as the language is inappropriate and vague as it currently relates to compostable products. Unlike recyclable products that can often be deconstructed to remove non-recyclable components, any "size" or "weight" of non-compostable components within covered products, regardless of "weight or volume," can persist as a contaminant in a compost pile.

Fortunately, SB 54 references existing California law (PRC Chapter 5.7) as the criteria for considering a product eligible to be labeled compostable, which includes standard specifications, such as ASTM D6400 and D6868, as pass/fail criteria to prove the performance of compostable items. This includes testing for biodegradation. Biodegradation is a microscopic process that cannot be assessed at a compost facility and therefore must be verified through controlled testing. Similarly, evaluating ecotoxicity requires a lab environment for testing. ASTM D6400 and D6868 are the appropriate standard specifications, and an element should be considered "de minimis" only if it complies with these standards.

Accordingly, we recommend that references to "composting" and "compostable" be removed from this "de minimis" allowance, and that components small in weight and/or size are adjudicated as part of a whole product, as covered by existing law (PRC 42355 – 42358.5) designed for this purpose. Alternatively, we request that the relevant provisions be revised to clarify that an element be considered "de minimis" only if the whole product still complies with ASTM D6400 and D6868. Without one of these corrections, the applicable provisions create uncertainty and allow for portions of products to be considered compostable for purposes of the proposed regulations even if they do not meet these strict standards that ensure such products do not cause harm to human health or the environment.

Section 18980.4 (Responsible End Market Criteria)

We reiterate many of the following requests made in previous comments and request that CalRecycle address the following concerns:

The statute affirms that responsible end markets must be defined "in a way that benefits the environment and minimizes risks to public health and workers." Yet, compostable covered products are suggested to have different end market requirements despite being tested to identical standards guaranteeing environmental benefit and public health. This is especially confounding given that compostable products are not typically separated out by type into distinct batches of compost, unless CalRecycle recommends that such bifurcation would be conducted with funding from this program.

We also remain concerned that compost facilities as end markets are not required to provide the conditions necessary to responsibly process covered compostable products into a stable and mature finished compost.

Section 18980.4(a)(4)(C) does not require items comprised of fiber or paper substrates (that may contain persistent polymeric components) to fully break down, creating unequal treatment of material types that not only betrays the underlying science of compostability, it also betrays PRC Chapter 5.7 of California law that requires paper and fiber products containing any plastic or polymer to undergo testing and certification. Removing the entirety of section 18980.4(a)(4)(B)-(C), including "fully biological decompose," solves this and ensures that compostable paper or fiber products are clearly defined, while contaminants are clearly separated.

Furthermore, while a "marketable" compost product as described in section (C) might ensure proper pathogen reduction, etc., the term is insufficient for ensuring conditions necessary for compostable products to break down. By not establishing relevant criteria, CalRecycle is risking substantial harm to the environment and acting contrary to the text and principles of SB54. We request that this section 18980.4(a)(4)(B)-(C) therefore be removed and replaced by recently published field-testing test methods ASTM D8618 or D8619 provide clear ranges of operating conditions, based on general practices for composting (that aren't unique to compostable products) and clear thresholds for compost stability and maturity. Composters should be required to submit an ASTM D8618 or D8619 test report to show that suitable operating conditions are met, a stable and mature compost is produced, and compostable products can confidently break down. This will ensure that composting facilities receiving funding are designed and operated to manage certified compostable products in the program and therefore are "responsible."

Finally, we reiterate that the previously published ISOR incorrectly states that certified compostable plastics cannot be a "recycled organic product," even though by definition, compostable plastics are made of organic carbon that is fully consumed by microorganisms, as evidenced by biodegradation testing that counts carbons, just like other compost feedstocks.

Section 18980.11.1. (Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers)

As stated previously, we support the consideration of "program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; and transportation safety." However, these extensions and exemptions fail to consider whether such limitations, requirements, or effects can be mitigated by funding from the program itself, despite the entire program being engineered to create such opportunities. We also remind the department once more that all lawfully labeled compostable products are already tested and certified based on the same conditions (under PRC 42355 – 42358.5). Therefore, a local jurisdiction or service provider that requests an exemption for one material or covered product type, but not another, based on performance claims, could not do so credibly without providing a credible field report with detailed operating conditions, such as the Compostable Field Testing Program or independently to the ASTM standardized field test methods (D8618 or D8619).

Finally, we remain concerned that the regulation text doesn't extend its restriction for certifiers to have ownership interest in any testing site, regardless of whether that's a laboratory or field testing. We request language modifications:

"Without limitation, the entity shall be deemed not to satisfy this requirement if any of the following are true:
(A) Outside of the allowances of ISO 17065 accreditation, it holds any ownership interest, whether direct or indirect, in any laboratory or site that conducts testing on which its certifications are based, conducts the testing itself, or is the producer of any product subject to the required certification requirement."

As always, we welcome the opportunity for collaborative discussion and dialogue about these concerns and look forward to hearing from your team regarding our comments in the near future.

Sincerely,

Ismat Yassin, Senior Government Affairs Manager
Alex Truelove, Senior Policy Manager
Biodegradable Products Institute
Policy@bpiworld.org

Response to O-48-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-49: California Chamber of Commerce (Adam Regele)

Comment O-49-1

February 13, 2026

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.

Response to O-49-1

Comment rejected. comment No response to this portion of the commenter's submission is necessary because it is an overview of later, more detailed portions of the submission and does not add suggestions or objections not already expressed in those portions. CalRecycle has responded to those portions separately.

Comment O-49-2

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.

Response to O-49-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which raises the same objections as this comment raises. This comment also specifically acknowledges that federal regulations "impose performance standards." A "performance standard" that must be met to "prevent[] contamination and ensure[] food safety" are, by definition, a "mandatory" federal restriction that the packaging at issue must satisfy. Such restrictions therefore may justify an exclusion under section 18980.2(a)(2), which does not describe federal restrictions in the way this comment alleges it does; nowhere does it require that those restrictions require the use of "particular packaging."

Comment O-49-3

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."

Response to O-49-3

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which also raises the objections raised in this comment. In particular, this comment misdescribes the effect of section 18980.2(a)(2)(B). The clauses of that subparagraph do not require entities to address theoretically possible alternatives. Subparagraph (B) refers to "any alternative packaging or packaging components," which cannot reasonably be read to refer to things that do not exist or are not known to be possible; such things are not "alternatives." Under subparagraph (C), as long as the notice submitted to CalRecycle contains the required elements, CalRecycle may only reject the notice if CalRecycle has identified packaging that it understands not to conflict with federal law, such that the notice must address why those cannot be used to comply with federal law.

The commenter's assertion that section 18980.2(a)(2) must expressly address "substantial or undue hardship," but such a standard would fail to meet the clarity requirement of Government Code section 11349.1(a)(2). The broader assertions that 18980.2(a)(2) fails to accommodate whether packaging "is economically or technologically realistic," "commercially scalable," would impose "great cost to health and safety," or risk "environmental impacts" is also misguided because such challenges are acknowledged in section 18980.2.4. That section acknowledges that financial and legal challenges may justify a "unique challenges" exemption and that exemptions for health, safety, or environment risk are allowed. Section 18980.2.4(f)(2)(A) also acknowledges that "unique challenges" need not render compliance impossible; compliance must be "impractical" due to those challenges. Section 18980.2.4 therefore establishes an exemption process that addresses the commenter's concern over compliance being "impractical" and the need to "account for health and safety needs." The

commenter's own express concessions acknowledge this outcome. The comment acknowledged that the exemptions described in section 18980.2.4 "reflect a legislative intent to temper the law's requirements with practical feasibility and negative externalities." The commenter does not explain why those exemptions give sufficient effect to that legislative intent for all packaging except for food and agricultural packaging. The commenter may assume that those exemptions are categorically unavailable for packaging that fails to meet the requirements of 18980.2(a)(2), but nothing in the proposed regulations suggests that section 18980.2(a)(2) has that effect.

Comment O-49-4

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.

Response to O-49-4

Comment rejected. The comment points out that an "impossibility" standard is inconsistent with the concept of federal preemption. Without explanation, the

commenter conflates the question of whether federal law preempts the Act with CalRecycle's determination of whether, as a matter of California law, packaging should be considered "covered material." If federal law preempts elements of the Act on its face, nothing in the proposed regulations could change that result, and section 18980.2.4 of the Act ensures that the status of packaging as "covered material" does necessarily subject the packaging to the prohibitions in Public Resources Code section 42050 concerning recyclability, compostability, and recycling rates. To the contrary, under the standards set forth in section 18980.2.4, packaging will be eligible for exemptions if meeting the Act's requirements renders packaging impractical due to financial, legal, or other unique challenges or raises significant health or safety risks. Because exemptions are available, the regulations avoid scenarios where complying with the Act and federal law is not reasonably possible regardless of whether the exclusion under 18980.2(a)(2) applies. The commenter even acknowledges this in comment O-49-3, which points to the "unique challenges" and health and safety exemptions as the legislature's way of "temper[ing] the law's requirements with practical feasibility and negative externalities." The commenter does not explain why those exemptions are insufficient for food and agricultural packaging.

Regarding the comment's misreading of section 18980.2(a)(2) to mean that "theoretical possibility" of complying with federal law to disqualify packaging for the exclusion, CalRecycle rejects this comment for the reasons provided in response to comments O-49-3 and B-3-1.

Comment O-49-5

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.

Response to O-49-5

Comment rejected for the reasons stated in response to comment B-3-1. As explained in greater detail in that response, CalRecycle does not retain discretion to deny a notice based on merely hypothetical alternatives or whenever it "imagines any way the conflict could be avoided." Nor does section 18980.2(a)(2) provide that CalRecycle can deny an exclusion based on "unstated criteria"; subparagraph (B) itself establishes the applicable criteria CalRecycle must apply.

Comment O-49-6

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.

Response to O-49-6

Comment rejected. The commenter disregards the fundamental effect of the Act and the proposed regulations. The commenter's principal assertion is that CalRecycle's "role is to avoid conflicts, not to second-guess producers' choices of federally compliant packaging or to design alternatives on their behalf." The assertion that the proposed regulation entails "second-guessing" producers' choices is critically flawed for multiple reasons. First, the fundamental effect of the Act is to require all producers to choose, among all packaging available, the options that comply with the Act's requirements. Those decisions are subject to CalRecycle's scrutiny for compliance under the Act regardless of whether they were also made in consideration of other laws. The commenter does not explain why producers of packaging for food and agricultural goods, but not producers of all other packaging, should generally not have to adapt to the requirements of the Act. In this respect, producers of food and agricultural goods face the same predicament when complying with the Act requires use of packaging that they otherwise would choose not to use. In both cases, exemptions from the Act's requirements under section 18980.2.4 provide the avenue for justifying use of packaging that violates the Act. Second, the commenter's logic results in an outcome akin in absurdity to the one the commenter erroneously assigns to section 18980.2(a)(2) elsewhere (that the exclusion requires showing that there are no theoretical alternatives or that all theoretical alternatives are impossible). Under the commenter's approach, producers would have no obligation to consider alternatives, even alternatives known to be sufficient, as a way to comply with the Act. That assertion is absurd because it would justify excluding packaging in every scenario where there is at least one option that satisfies federal requirements but violates the Act. The producer would be able to procure the exclusion by choosing that option, effectively rendering compliance with the Act voluntary.

The commenter's argument that Public Resources Code section 42060(b) is "self-executing" and not subject to examination by CalRecycle is also unreasonable. No language in section 42060(b) requires it to be self-executing. The commenter interprets the phrase "neither the department nor the PRO shall impose any requirement . . . that is in direct conflict with a federal law or regulation" to mean that CalRecycle must have no role in determining whether

section 42060(b) requires packaging to be deemed not covered material. On its face, that phrase does not have such a meaning. The phrase concerns whether CalRecycle "impose[s] any requirement." The commenter proposes the irrational result that CalRecycle must have no role in determining whether it is doing so and whether the requirements it imposes conflict with federal law. The commenter's assertion that the statute must operate automatically, which the commenter describes as operating "by force of law," is spurious because, in every instance, some entity is assigned the role of initially deciding what that "force of law" is. The commenter proposes that CalRecycle must have no role in that initial determination. That outcome is unreasonable on its face and contradicts the core function of CalRecycle under Public Resources Code section 42060: to implement and enforce the Act and ensure that its requirements and policy goals are met.

Lastly, the legislative intent that the commenter extracts from statutory text is unsupportable and disproven by the commenter's own logic. The commenter claims that the Legislature was 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." The commenter is correct that the Legislature intended certain provisions to operate without CalRecycle having a gatekeeping role. The Act manifests that intent extensively in Public Resources Code section 42041(e)(2), which lists thirteen different categories of materials that are categorically excluded from the definition of "covered material," with no provision for determinations by the Department for eleven of them. The commenter fails to explain, however, why section 42060(b) should be given the same effect as those express exclusions in section 42041(e)(2). Section 42060(b) contrasts with those exclusions because it does not expressly describe categorical, automatic exclusions from the definition of "covered material." While CalRecycle interprets 42060(b) as authorizing CalRecycle to deem certain packaging not "covered material," the obvious difference between that provision and the express exclusions from the definition of that term in section 42041(e) requires different interpretations. CalRecycle has appropriately given section 42060(b) a different effect by not considering it self-executing or subject to the sole discretion of regulated entities.

Comment O-49-7

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 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 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 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 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 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 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 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 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 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

Response to O-49-7

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the 45-Day Changes.

Comment O-49-8

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 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:
Agricultural Council of California
Almond Alliance
American Chemistry Council

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

---

[1] *See* PRC § 42041(e)(2)(E).

[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/

[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).

[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.").
[10] PRC § 42041(aa)(5).
[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.
[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-andproposition- 65
[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).

Response to O-49-8

Comment rejected. No substantive response is necessary regarding the portions of the comment that do not address revisions to the current proposed regulations or raise an objection related to the rulemaking process. Regarding the commenter's recommendation that CalRecycle "reconsider the January 2026 changes to Section 18980.2," CalRecycle rejects that recommendation for the reasons stated in response to comment B-3-1, which raises the same objections to the changes as does this comment.

O-50: Agricultural Council of California (and Coalition) (Emily Rooney)

Comment O-50-1

On behalf of the undersigned organizations, we submit these comments regarding CalRecycle's recent draft regulatory text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Collectively, we represent a broad coalition of food and agricultural associations, whose members may be subject to this regulation. We thank CalRecycle for their continued work to address concerns regarding affordability and costs associated with compliance with SB 54, however, we continue to

remain concerned about overall implementation of the regulation. We look forward to working with you throughout this process.

At this time, agricultural production and food distribution operate within complex food safety and trade systems that demand reliability, predictability, and strict adherence to food safety standards. The regulation, as currently drafted, introduces significant compliance risks that threaten affordability, disrupt supply chains, and create practical barriers for food and agricultural businesses operating in California.

We respectfully urge the California Department of Resources, Recycling and Recovery ("CalRecycle" or "the Department") to restore a clear and workable categorical exclusion for food and agricultural products, consistent with prior draft language and statutory direction, and to modify several provisions that would otherwise impose unmanageable regulatory challenges for the state's food supply chain.

Response to O-50-1

No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-50-2

I. Restoration of a Workable Categorical Exclusion for Food and Agriculture

The revisions to Section 18980.2(a)(2) ("Categorically Excluded Material") represent a substantial departure from earlier draft language that provided a more functional pathway for food and agricultural entities to comply with SB 54. The current proposal narrows the exclusion in a manner that makes it effectively unattainable for many producers and growers, and introduces added complexity and vagueness compared to previous drafts.

Agricultural products require packaging regimes that serve multiple purposes such as maintaining food safety, preserving freshness, preventing contamination, reducing spoilage, meeting export requirements, and protecting against the spread of pests and plant diseases. These packaging types are integral to public health, environmental protection, and economic viability.

The inclusion of the term "mandatory" in connection with federal food safety requirements, and the proposed three-part test in § 18980.2(a)(2) subparagraph (B)(i)-(iii) requiring producers to demonstrate that no other packaging alternative is "reasonably possible," establishes an exceptionally high burden of proof. In practice, this would force producers to prove the negative that no conceivable alternative packaging configuration could satisfy both food safety and SB 54 requirements. Such a standard is not only burdensome but may be impossible to meet given differing interpretations of what is "reasonably possible."

Importantly, SB 54's statutory language references federal "guidelines" in relation to food safety requirements administered by the U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA). Federal food safety compliance frequently relies not only on codified regulations but also on agency and industry guidance documents and frameworks, hazard analyses, and commodity-specific best practices. Such guidance is the backbone of food safety compliance across the industry.

Limiting the exclusion to situations involving only explicit, mandatory federal laws disregards the practical structure of federal oversight. Food safety compliance is preventative and does not rely solely on prescriptive mandates. Packaging decisions are routinely shaped by scientific guidance and risk assessments that may not appear in statute or regulation but are nonetheless essential. We therefore urge CalRecycle to:

- Reinstate prior draft language that provided a clear categorical exclusion for food and agricultural packaging necessary to meet FDA and USDA safety requirements and guidance;
- Clarify that federal and state guidance documents. and commodity-specific standards qualify as sufficient for exclusion; and
- Remove or substantially modify the "reasonably possible" alternative packaging requirement, which introduces uncertainty and invites inconsistent interpretation.

We remind CalRecylce that these changes are necessary to providing a workable categorical exclusion, which is necessary to ensure that SB 54 does not inadvertently compromise food safety, public health, or state supply chains or increase costs to the food supply.

Response to O-50-2

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1. CalRecycle also rejects the suggestion to include the phrase "guidance documents" because that phrase is vague and does not appear in statute, whereas "guidelines," "rules," and "regulations" do. CalRecycle also declines to add "commodity-specific standards" as sufficient bases for exclusion because Public Resources Code section 42060(b) only concerns legal standards, not industry-created ones. To the extent there are "commodity-specific standards" imposed by law, section 18980.2(a)(2) already accounts for them.

Comment O-50-3

II. Affordability and Food Supply Chain Stability

California consumers are already facing elevated food costs driven by inflation, transportation costs, and global market volatility. The proposed regulation risks adding another layer of cost and uncertainty to the state's food system.

Agricultural businesses operate on thin margins and long planning horizons. Packaging materials are often ordered months in advance of harvest/processing, which increases the risk of unnecessary packaging waste and cost burdens.

Moreover, perishable commodities and food goods are especially sensitive to packaging changes. If packaging options are limited by regulatory constraints before scalable alternatives are widely available, the result may be increased food waste and consumer costs, an outcome directly contrary to the goals of SB 54. The changes made in this regulatory draft essentially strip away any costs savings achieved under the previous draft regulation.

The proposed changes to Section 18980.2(a)(2) would introduce significant business uncertainty for agricultural producers seeking to determine whether their packaging qualifies for exclusion. Regulatory ambiguity at the beginning of the supply chain reverberates across distributors, retailers, and consumers and poses a direct threat to California's supply chain. Implementation of SB 54 must proceed in a manner that safeguards the continued availability of safe, nutritious, and affordable food in California.

Response to O-50-3

Comment rejected. As explained in greater detail in response to comment B-3-1, the revisions to section 18980.2(a)(2) do not change the scope of what packaging may be excluded from the definition of "covered material." Reverting to the 45-Day Changes would therefore not change the effect of the regulation on costs. Regarding "uncertainty and timelines (or "planning horizons") involved in supplying agricultural goods, no change is necessary to address that concern. The revisions reduce uncertainty by presenting objective, factual criteria governing that scope, and effectiveness of the exclusion require submission only of a complete notice, not a determination by CalRecycle that packaging satisfies those criteria. The proposed regulation also generously accounts for the delay between the procurement and use of packaging because, once a complete notice has been submitted, subparagraph (E) significantly delays when the packaging at issue will be considered "covered material." Under the interactive process described in that subparagraph, the delay must be at least 180 days and may be considerably longer.

Comment O-50-4

III. Research, Development, and Biological Risk Considerations

Unlike many consumer goods industries, agricultural packaging decisions are deeply connected to food safety and pest mitigation. Produce, nuts, dairy, nursery products, and other agricultural commodities are perishable products subject to microbial growth, moisture loss, pest exposure, and degradation.

Developing compliant packaging alternatives requires extensive research and development to ensure that new materials: • Maintain food safety and shelf life;

- Prevent cross-contamination;
- Protect against the spread of pests and diseases;
- Resist moisture and temperature fluctuations; and
- Comply with federal and international export standards.

These R&D processes are time-intensive and often commodity-specific. Packaging that functions adequately for one product is likely unsuitable for another. A regulatory framework that assumes interchangeable packaging solutions or rapid packaging changes, does not reflect the scientific and operational realities of food production.

We therefore recommend that CalRecycle incorporate realistic phase-in periods and flexibility for agricultural commodities by restoring the categorical exclusion language provided in the previous draft regulation.

Response to O-50-4

Comment rejected. No revision is necessary because section 18980.2(a)(2) does not disqualify packaging from exclusion when alternatives do not exist. To the contrary, it acknowledges that there might be no alternatives. The commenter's reading of the proposed regulation is that packaging that is merely speculative, including because it's future existence depends on "developing" it through "extensive research and development," might be considered an alternative. That is not a reasonable understanding of the proposed regulation because it reads the express reasonableness concept out of it. Moreover, restoring the 45-Day Changes version of the regulations would not provide "phase-in periods" to address the assertion that the regulation wrongly "assumes interchangeable packaging or rapid packaging changes." There is no phase-in requirement or process in the 45-Day Changes version of 18980.2(a)(2). Lastly, section 18980.2.4, not section 18980.2(a)(2), is not the appropriate provision of the proposed regulations to address scenarios where packaging is understood to be an alternative but needs to be "phased in." Public Resources Code section 42060(a)(3), addressed in section 18980.2.4 of the proposed regulations, expressly contemplates exemptions and phase-in plans to accommodate such challenges.

Comment O-50-5

IV. SB 54 Statutory Conflict

SB 54 states in Article 3 Program Administration 42060(b)(1), “The department shall ensure that any regulations adopted pursuant to this chapter and do not conflict with regulations issued by the United States Food and Drug Administration and the United

States Department of Agriculture and consider requirements imposed by other California state agencies."

Also, in 42060(b)(2) "Neither the department nor the PRO shall impose any requirement, including, but not limited to, a recycled content requirement, in direct conflict with a federal law or regulation…" and, "…regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities, requirements for microbial contamination, structural integrity, or safety of packaging under the Federal Food, Drug, and Cosmetic Act."

This statutory language recognizes that food packaging is already subject to an extensive federal regulatory framework designed to protect public health. The statute's use of the term "guidelines" is deliberate and broader than "mandatory" regulations, encompassing not only codified regulations but also agency guidance documents, compliance policies, and commodity-specific best management practices supported by the Food and Drug Administration (FDA) and United States Department of Agriculture (USDA).

Response to O-50-5

Comment rejected. CalRecycle rejects this comment for the reasons provided in response to comment B-3-1 (regarding use of the term "mandatory) and comment O-26-1 (regarding the relevance of distinguishing between "mandatory" and "voluntary" guidelines). CalRecycle's response to this commenter's earlier comment, O-50-2, also applies to this comment because it presents a similar argument based on the differences between guidelines and regulations.

Comment O-50-6

V. Exemption Request Regime Presents Inherent Conflict of Interest

The restoration of categorical exclusions for food and agriculture goods is critical to creating a workable path towards compliance for producers throughout the state. The only other option available to producers is the application for exemption. However, as written, this process presents an inherent conflict of interest for the PRO in managing the exemption application process. Additionally, as written, the regulation grants the PRO substantial influence over the application process for achieving exemptions. The PRO has an inherent financial motivation to collect fees on as many producers and covered materials possible and therefore is not an unbiased arbiter in seeking exemptions for producers. Therefore, the current exemption pathway for food and agriculture producer is neither workable nor feasible.

Response to O-50-6

Comment rejected. No response to this comment is necessary because it raises criticism of the exemption process set forth in section 18980.2.4, which has not been revised in the 15-Day Changes. To the extent the commenter intended to

suggest that the revisions in section 18980.2(a)(2) create a problem that must be addressed by revising section 18980.2.4, CalRecycle rejects that suggestion because the commenter's allegation of a conflict of interest is unfounded. Exemption requests do not implicate the PRO's financial motivation to "collect fees on as many producers and covered materials possible [sic]." As explained in section 18980.2.4, exemptions do not affect whether packaging is covered material or "otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees."

Comment O-50-7

VI. Governance by PRO and CalRecycle Oversight

This coalition would like to note our overall concern about the governance structure and authority granted to the PRO by CalRecycle under this program and potential for conflicts of interest and biases. CalRecycle must exercise extraordinary and consistent oversight in this matter and establish a process for stakeholders to provide timely and direct input to the Department on PRO actions/decisions and have a process for providing transparency in actions taken by the PRO to CalRecycle on behalf of producer members.

Response to O-50-7

Comment rejected. This comment states only an "overall concern," without reference to any particular provision of the proposed regulations. To the extent the commenter's general concern relates to the changes made to section 18980.2(a)(2), CalRecycle cannot respond because it cannot discern the particular changes to which the commenter objects or the changes the commenter recommends.

Comment O-50-8

VII. Support for Broader Food and Agriculture Coalition

In addition to our concerns outlined above, we submit these comments in support of comments submitted by other California food and agriculture stakeholders.

Response to O-50-8

Comment rejected. CalRecycle rejects this comment because it only states the commenter's support for other comments, without adding any objections or recommendations concerning the revisions embodied in the 15-Day Changes.

Comment O-50-9

Conclusion

California agriculture supports responsible efforts to reduce plastic pollution and strengthen recycling infrastructure. Our members are committed to environmental stewardship and understand the importance of recycling packaging. However, regulatory implementation must reflect the operational and food safety realities of food and agricultural production.

As currently drafted, the proposed regulations introduce extraordinary compliance challenges that threaten affordability and risk destabilizing the state's food supply chain. We respectfully request that CalRecycle restore a clear categorical exclusion for food and agricultural packaging consistent with prior draft language, recognize federal food safety guidance as the relevant standard under the statute, and modify provisions that create unattainable burdens of proof.

This coalition stands ready to continue collaboration with CalRecycle to achieve environmental progress while preserving a safe, resilient, and affordable food system for California.

Thank you for your consideration.

Response to O-50-9

No response to this portion of the commenter's submission is necessary because it is a summary the earlier, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

O-51: California Chapters of the Solid Waste Association of North America's (SWANA) Legislative Task Force (Jason Schmelzer)

Comment O-51-1

The California Chapters of the Solid Waste Association of North America's (SWANA) Legislative Task Force (LTF) is the world's largest association of solid waste (more than 10,000 members). SWANA's three California chapters represent nearly 1,100 of those members. SWANA represents the solid waste industry, including many of the local governments responsible for implementing waste diversion and recycling programs. The LTF is responsible for representing the California Chapters on legislative and regulatory issues and advocates for environmentally- and economically-sound management of municipal solid waste.

SWANA LTF appreciates the opportunity to provide feedback on the proposed regulatory language for the implementation of the Plastic Pollution Prevention and Packaging Producer Responsibility Act, SB 54. We believe the intent of SB 54 was to shift the costs of collecting and processing covered materials from jurisdictions and ratepayers to producers through responsible end markets. We offer the following comments on the proposed regulations:

Response to O-51-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-51-2

Categorical Exclusions

We support CalRecycle's revisions to the categorical exclusion provisions because the changes improve clarity, administrative workability, and alignment with existing statutory and federal requirements. By more precisely defining excluded materials and establishing a transparent process for asserting exclusions— particularly in cases involving federal packaging mandates—the updated language reduces ambiguity and minimizes the risk of inconsistent interpretation or inadvertent noncompliance. Clearer standards also support efficient program implementation by local governments and other public entities that will interact with the extended producer responsibility framework.

Response to O-51-2

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-51-3

Local Jurisdiction Enforcement and Penalties

SWANA believes that the department should entirely alter its approach to enforcement against local jurisdictions. While we acknowledge that SB 54 contains specific requirements for local jurisdictions, including Section 42060.5 of the Public Resources Code (PRC), we don't believe the department should impose monetary penalties against local jurisdictions when the intent of SB 54 is to relieve cost pressures on local jurisdictions and ratepayers.

Section 42080(a) of the PRC addresses enforcement and doesn't mention local jurisdictions. It's hard to interpret the department's enforcement authority as applying to local jurisdictions, since the language specifically refers to failure that "subject a PRO, producer, wholesaler, or retailer to penalties". The language in 42080(a) explicitly limits penalties to these entities and does not include local jurisdictions in its scope. Thus, based on the statutory text, CalRecycle's enforcement powers under this section do not appear to extend to local jurisdictions. Nowhere else in Section 42080 is the department's enforcement authority expanded to include local jurisdictions. In fact, local jurisdictions aren't mentioned once in the entirety of Article 5 on enforcement and penalties.

While we understand that Section 42081 of the PRC is broadly scoped to allow the department to impose a civil penalty on "any entity not in compliance with this chapter", we think this should be interpreted in the context of the department's enforcement authority under Section 42080. This is reasonable when you consider how the various provisions of 42081 are drafted. Local jurisdictions aren't mentioned once in Section 42080, but several provisions specifically apply to a "PRO or producer", such as when penalties begin accruing or the use of a corrective action plan. Section 42081(c) addresses how the department shall consider certain factors when applying penalties

under this section and specifically addresses a “producer or PRO” several times but has no references to local jurisdictions.

It's inconsistent with the intent of the legislature to read the statutory provisions on enforcement and penalties as being ***more lenient*** on the PRO and producers by allowing them and not public agencies to delay the accrual of penalties, consider factors of control, consider economic size and condition, and make use of a corrective action plan. Based on our reading of the statute, we would recommend using existing enforcement mechanisms such as those outlined in AB 939 and SB 1383, both of which are applicable here and should serve as the model for local jurisdiction enforcement for any requirements under SB 54. We simply don’t think the legislature intended to apply $25,000 and $50,000 per day penalties against local jurisdictions and there’s nothing in the legislative record to suggest such intent.

Responsible End Markets and Alternative Technologies

In our comment letters during the previous regulatory process, we suggested that the department should consider alternative technologies because they’re needed to manage plastics that cannot be prevented or recycled as they can create renewable fuel and other products which reduce transportation emissions and fossil fuel demand.

We continue to believe that CalRecycle should provide further clarity in the regulations about whether some of the common forms of technologies that exist now are acceptable forms of recycling. Furthermore, if CalRecycle could further specify the extent to which the production of fuels is considered ‘recycled products’ or hazardous wastes or unacceptable products of a recycling technology, that could further clarify what technologies might be evaluated under this section. However, there should also be a pathway to the evaluation of new or additional technologies that may be introduced in the future to be analyzed and considered via peer-reviewed studies as described in Section 18980.3.6.

Timing of Local Jurisdiction Collection of Covered Materials

We are still concerned about both the timeline and the criteria for determining compliance. Local jurisdictions should not be required to collect mandated materials before receiving funding — especially if the necessary infrastructure is not yet in place — unless the PRO has clearly tied those collection and processing requirements to a guaranteed funding source and reimbursement mechanism. Not every jurisdiction has been able to prioritize early investments the infrastructure required to handle covered material.

Requiring collection of covered materials immediately upon approval of the PRO plan (per Section 18980.11) is unrealistic unless time is allowed to ensure the collection is compliant. Without these guarantees, the regulation could, in essence, become an unfunded mandate, which is contrary to the goals and intent of SB 54. To allow sufficient time for plan implementation and funding, we recommend providing one year after the plan is approved before requiring jurisdictions to collect covered material.

If the department doesn't have the authority to delay the requirement on local jurisdictions, then responsibility will fall on local jurisdictions to pursue an exemption or an extension through the process described in Section 18980.11.1. That process should be fully established and available to local jurisdictions prior to plan approval and the process should be designed to move as expeditiously as possible so that an exemption can be secured before the requirement to collect covered materials is implemented. The current draft wouldn't allow a local jurisdiction to request an exemption for at least the 90-day application review period that is provided to the PRO in 18980.11.1(d). The PRO is given more time after plan approval to implement their plan than local jurisdictions are given to start collecting covered materials.

Response to O-51-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-52: Association of California Goodwills (Jennifer Roe)

Comment O-52-1

The Association of California Goodwills (ACG), representing 13 regional Goodwill agencies across the state, appreciates the opportunity to comment on SB54. After reviewing the legislation and its implementation, we would like to share the following perspectives.

Goodwill understands the intention and generally supports SB54, but it is having unintentional and unexpected negative outcomes on secondhand markets ability to retail used goods, large retailer overstock and unsold new goods, etc. Goodwill equals reuse and the policy could hinder reuse.
We would like to highlight several concerns:

- Nonprofits may become less inclined to process reusable materials if doing so creates reporting burdens or economic penalties. This could increase landfill use, raise emissions, and divert reusable goods into recycling or disposal. Basic practices like tagging or bagging miscellaneous items are essential to returning secondhand goods to reuse.
- Secondhand nonprofit retailers would face significant new costs, including premium packaging, retail system changes, and operational adjustments.
- Innovative collection strategies that rely on essential packaging (e.g., curbside or mail-back programs) may be discouraged under the current interpretation of the law. This conflicts with other EPR programs such as SB707.
- Our nonprofit systems are not designed for the granular reporting required. Implementing compliant data systems would require costly subscriptions and integrations. Additionally, nonprofits typically do not employ packaging engineers,

leaving organizations without the expertise needed for source-reduction planning or forcing them to hire for specialized roles.
- Additional costs could have two major consequences to the public: (1) would take away from Goodwill's mission of workforce development for individuals with employment barriers. (2) Increase the average price of goods in our retail stores, more people are turning to secondhand goods to offset the affordability crisis.

Other states have recognized this and exempted non-profits in their packaging regulation.

OREGON
Even if a material is a "covered product," its producer may be exempted from compliance obligations (Sections 5 and 2(32)). The law exempts: 503(c)(3) nonprofit organizations, public bodies, restaurants that are not producers of food serviceware;

COLORADO
Charities
Nonprofits are excluded from the definition of producer.

The Association of Goodwill's requests:

- A producer exemption for nonprofit thrift, specifically 501(c)(3) organizations involved in thrift, similar to other state EPR programs.

In conclusion, Goodwill's size and 124 year history provides us with resources to monitor and comment on legislation such as SB54, but there are many other non-profit organizations that do not have the public policy resources available to them. Goodwill is an expert in recirculating items for reuse. As the policy is currently written, we believe that the policy may unintentionally hinder our ability to recirculate items for reuse.

Response to O-52-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-53: League of California Cities (Melissa Sparks-Kranz)

Comment O-53-1

The League of California Cities (Cal Cities) appreciates the opportunity to provide public comment to the California Department of Resources, Recycling, and Recovery (CalRecycle) on the draft regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Chapter 75, Statutes 2022) on behalf of California's 483 cities statewide.

In California, local jurisdictions are the backbone of solid waste management and recycling efforts .1 Cal Cities has long-supported solid waste management and recycling goals that are developed with reasonable and achievable implementation measures, anticipating the need to ensure that communities maintain public health and advance recycling efforts based on our changing climate. SB 54 was successfully chaptered into statute based on several critical components being incorporated into the law, including that **producers are responsible for the full costs of processing covered materials to drive towards a more circular economy. Full costs include the costs incurred by local jurisdictions.**

California's Constitution requires that the state reimburse local governments for programs the state requires local governments to carry out. Extensive statutory and regulatory structure governs the manner in which local governments are reimbursed. SB 54 imposes a mandate on local governments. Instead of requiring the state to reimburse local governments for the costs incurred to comply with the mandates, SB 54 requires the PRO to reimburse local governments. Yet the draft regulations fail to explain with any specificity the process for reimbursement, the costs that will be reimbursed, the mechanism for transferring payment to local governments, and even at a minimum the regulations do not even acknowledge that these cost recovery details be included as a requirement in the PRO Plan and budget. We additionally have serious concerns with two potential loopholes in the draft regulations with the inclusion of the new categorical exclusion and the eligibility of products being labeled 'compostable' which are anticipated to cause unintended consequences and potential additional cost impacts on local governments who are integral in implementing the program.

Cal Cities respectfully submits for CalRecycle's record that we have remaining concerns with the draft regulations that we believe will hinder how implementation progresses. The following concerns are detailed below:

Footnotes:
1 Public Resources Code Section 42040(2)(A)

Response to O-53-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-53-2

1) Comment 1: The added categorical exclusion is an unintended loophole that will impact the implementation of and increase local affordability concerns associated with SB 54.

The draft regulations added a new pathway for packaging components to be excluded from the law if it is necessary to comply with rules, guidance, or other standards issued by the USDA or FDA to prevent microbial contamination or to maintain the safety or structural integrity of packaging. If a conflict arises in implementation, producers can

utilize the exemption pathway within subparagraph (4) of Section 18980.2.4(c) Exemptions for Certain Covered Materials for (A) unique challenges, (C) health and safety reasons, or (D) materials determined unsafe to recycle. Unlike categorically excluded materials, exempted materials remain covered under the law, meaning regulated producers must still report and pay fees into the system with a required phase-in plan to ultimately achieve compliance. Exemptions are also limited to 2 to 5 years, while excluded materials are permanently removed from the law's purview.

This new categorical exclusion of materials creates a significant and unfounded potential loophole for many producers to exclude their materials from the requirements of SB 54. Not only does this expansion go beyond statutory boundaries, but excluding more materials will result in higher costs for many regulated producers as the fixed costs—such as outreach, collection, processing, reuse/refill infrastructure, and development of responsible end markets—will be spread over fewer businesses. It also means that local governments and our ratepayers will remain responsible for the end-of-life management of much of the single-use packaging that SB 54 intended to shift to producer responsibility.

We urge CalRecycle to remove Section 18980.2(a)(2) from the draft regulations and instead rely on the existing exemption process (Section 18980.2.4) for packaging or packaging components used by food or agricultural commodities that are unable to comply with SB 54 due to conflicting federal regulations.

Response to O-53-2

CalRecycle rejects this comment for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes) regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. Those reasons apply equally to this comment, which criticizes inclusion of section 18980.2(a)(2) but does not raise any objection arising specifically from the changes made to that provision.

Comment O-53-3

2) Comment 2: The eligibility of products being labeled 'compostable' is an unintended loophole that will impact the implementation of and increase local affordability concerns associated with SB 54.

Similarly, the eligibility of items being labeled 'compostable' is highly problematic for successful implementation. AB 1201 prohibits materials from being labeled "compostable" unless they meet specific criteria, including the requirement to be "designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations." (Public Resources Code Section 42357(g)(E)).

However, Section 18980.3.3(c)(5) of the draft SB 54 regulations clarifies that an item is designed to be associated with the recovery of desirable organic waste "*if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with desirable organic waste.*" This regulatory framing essentially provides that any material marketed or labeled to be composted, is considered "associated with the recovery of desirable organic waste" and therefore potentially compostable under SB 54. The intent of Section 42357(g)(E) is that a product facilitates the capture of desirable organics, such as food scraps and yard waste. The Section 18980.3.3(c)(5) of the current draft regulations effectively says that to be able to be labeled "compostable," a product simply needs to be labeled "compostable," provided it meets the other criteria in Section 42357.

Allowing all packaging and food ware, regardless of its material composition, bearing a "compostable" label to be considered "desirable" was certainly not the intent of AB 1201, and the draft regulations must be updated to close this unintended loophole. **We request that the second sentence in Section 18980.3.3(c)(5) of the draft SB 54 regulations be removed**, which states "*For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with 67 desirable organic waste.*"

We recognize the Director of CalRecycle has issued a notice that will allow a two-year extension for compostable plastics which will expire June 30, 2027. However, that will allow for compostable plastics to be collected under SB 54 covered materials. CalRecycle also clarified that no extensions will be granted beyond January 1, 2031 which will dramatically impact local governments efforts to comply with SB 54. Local jurisdictions will have to go to greater lengths to separate these non-materially compostable products in the waste stream which will add greater cost concerns on the backs of ratepayers, which remains a significant concern for overall implementation.

In addition to these concerns, we continue to believe that the draft regulations have not address our previously outstanding comments included in Appendix A below, which were submitted to CalRecycle on October 7, 2026. We respectfully request these outstanding concerns be resolved in the final regulations.

Cal Cities requests CalRecycle strongly consider these comments in finalizing their regulatory package. Please do not hesitate to contact me at msparkskranz@calcities.org or 916-658-8232 regarding our input.

APPENDIX A

The following comments were previously submitted the CalRecycle by the League of California Cities in our October 7, 2025 public comment letter. We respectfully required these outstanding public comments be reconsidered and such changes be incorporated into the final regulations:

1) Comment 1: Section 18980.8(g) must include specific requirements for the PRO plan to identify the "mechanism and schedule" for fully funding costs pursuant to the Act.

SB 54 requires that the PRO Plan include not only a process for determining costs incurrent by local jurisdictions (based on information provided by the local jurisdiction2), but the mechanism and schedule for transferring the portion of the fee required by Public Resources Code Section 42053(c)(7) to local jurisdictions. The Draft Regulation Section 18980.8(g) does not include adequate information regarding the mechanism and schedule for issuing payments to local jurisdictions for covered costs. As written, the Draft Regulation Section 18980.8(g)(4) simply requires an undefined "reasonable period" and fails require the PRO to include in their plan the "mechanism" for reimbursement.

Cal Cities strongly urges clarification in the draft regulations to address the following:

- Covered costs must be based on information provided by the local jurisdiction;
- The PRO plan must specify how covered costs will be determined in writing by the PRO; and
- The PRO plan must specify the schedule for issuing payments and payment mechanism;

2) Comment 2: The draft regulations must specify that the local jurisdiction should be consulted and then notified of payments directly to recycling service providers from the PRO to prevent duplication in cost recovery from local jurisdictions.

Many, but not all, local jurisdictions have existing contracts with recycling service providers to provide the waste management and recycling services within their jurisdiction. While SB 54 allows for both local jurisdictions and recycling service providers to receive payment for their costs from the PRO, it is important not to duplicate requests for payment. For example, if a local jurisdiction has a franchise agreement and is requesting reimbursement directly from the PRO for covered costs, the recycling service provider should not request the same costs of the PRO. To ensure this is handled smoothly, the regulations in Article 8, Section 18980.8(g)(8) should be revised regarding any costs determined to be a recycling service provider's covered costs, where the PRO or Independent Producer must first consult with and then subsequently notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination. By initiating a consultation first, the local jurisdiction can clarify if the request for covered costs is already a part of their existing contract with the recycling service provider and already a covered cost of the local jurisdiction. As currently written, the draft regulations do not allow for a clear

pathway for how to resolve if there are duplication of costs between the local jurisdiction and the recycling service provider, other than noticing the local jurisdiction.

3) Comment 3: The draft regulations must be revised to address how to resolve disputes over the amount that will be paid for a "covered cost" as part of the dispute resolution process.

Section 18980.8(h) offers mediation or arbitration, or any process agreed to by the parties as a way of resolving disputes over what's a "covered cost." However, there's no process for resolving disputes over the amount that is owed to the local jurisdiction for an agreed-upon "covered cost." We believe this is simply a clarification that should be added to Section 18980.8 (h) to ensure that the dispute resolution process does not only address whether a cost is a "covered costs" but also to resolve the amount claimed by the local jurisdiction. We believe this needs to be more explicitly stated in the regulations.

4) Comment 4: Section 18980.13, the enforcement provisions pertaining to local jurisdictions, must be revised to ensure that penalties and fines are not imposed prior to providing local jurisdictions the opportunity to respond to a notice of violation and to cure the violation and that the local jurisdiction's role of materials collection (not transfer) is clarified in the regulations to be consistent with statute.

As clearly stated in statute, failure to comply with the requirements of the Act, including failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, or retailer to penalties for violations or revocation of an approved plan. SB 54 specifically states the penalties for violation are subject to a PRO, producer, wholesaler, or retailer. Local jurisdictions are not explicitly authorized to develop a corrective action plan to remedy a violation under SB 54 (in large part because they were not anticipated to be subject to enforcement actions).

Firstly, Local jurisdictions are solely required to collect covered materials on the covered materials list, as required in statute under SB 54. Article 11, Section 18980.11 must be revised to explicitly require 'collection', not 'collection and transfer' of covered materials to a responsible end market or intermediate supply chain entity. Cal Cities believes that the provisions in the draft regulations to transfer materials to responsible end markets directly must be removed. This is critical when it comes to enforcement of the regulations and the scope of the local government's responsibility under the Act.

Prior to imposing penalties for a violation, CalRecycle should identify if the PRO or producer are preventing the local government or recycling service providers from complying. CalRecycle should then be required to provide notice to the local jurisdiction/recycling service provider (proposed as two notices issued 90 days apart) and provide a minimum of 180 days to remedy the violation before penalties are invoked. CalRecycle must provide the local jurisdiction/recycling service provider the

opportunity to develop a response to remedy the violation prior to any further compliance action being taken.

The draft regulations must recognize that SB 54's enforcement authority is directed toward producers and the PRO and respect that local jurisdictions and recycling service providers are instead subject to existing enforcement regimes, including AB 939. The draft regulations impermissibly sought to impose SB 54's enforcement regime intended for the PRO on local jurisdictions and recycling service providers. This approach was unsupported by SB 54's statutory construction and local compliance can be better accomplished through existing enforcement pathways.
SB 54's enforcement authority is clearly limited to imposing penalties on producers and the PRO. The regulations are predicated on the assumption that the term "any entity" in Section 42081(a)(1) of Public Resources Code broadens the scope of its enforcement authority; however, that term must be defined in the draft regulations. Public Resources Code Section 42081 seeks to interpret and implement Public Resources Code Section 42080 and does not vest CalRecycle with additional authority to determine what constitutes a violation of SB 54 beyond the scope of Public Resources Code Section 42080.

Public Resources Code Section 42080 establishes what constitutes a violation of SB 54 and provides that failure to comply with the requirements of SB 54 will subject a PRO, producer, wholesaler, or retailer to penalties for those violations or revocation of an approved plan. Public Resources Code Section 42081 in turn:

- Sets the amount of penalties;
- Provides that they shall not accrue against a producer or PRO until 30 days after notification of the violation;
- Allows a producer or PRO to submit a corrective action plan to CalRecycle for approval detailing how and when it will come into compliance with SB 54; and
- Sets forth various factors CalRecycle shall consider when determining the penalty amount, including whether the violation was beyond the reasonable control of the producer or PRO, the size and economic condition of the producer or PRO [...]

Public Resources Code Sections 42083 and 42084 also allows CalRecycle to impose additional requirements on a producer or PRO for failure to meet various requirements of SB 54.

Great lengths are taken in statute to outline the potential enforcement actions that can be imposed against producers or the PRO, yet there is not a single instance in statute that refers to enforcement upon local jurisdictions or recycling service providers. Neither Public Resources Code Sections 42080 nor 42081 contemplate penalties against local governments or recycling service providers. Furthermore, the draft regulations would have inappropriately subjected local jurisdictions and recycling service providers to even more severe consequences for violations of SB 54 than apply to the PRO and producers since local governments and recycling service providers cannot implement a

corrective action plan, as is available for the PRO and producers. It is difficult to imagine the Legislature providing a more lenient compliance pathway for a producer or PRO than that which would be available to a local jurisdiction or recycling service provider, given that the law is intended to shift the burden of solid waste recycling away from local jurisdictions and onto producers who introduce packaging into the marketplace.

Local jurisdictions are subject to AB 939's diversion requirements and must develop source reduction and recycling elements outlining how they will achieve the state's solid waste and recycling requirements. Under the AB 939 framework, CalRecycle is required to regularly review jurisdictions and determine whether they have made a good faith effort to implement their source reduction and recycling element, with penalties of up to $10,000/day for noncompliance. Therefore, a local jurisdiction's failure to comply with SB 54 should be considered a violation of their existing requirements to implement diversion programs through AB 939 and subject them to these penalties exclusively.

Reporting and compliance review for SB 54 should be incorporated into existing Electronic Annual Report (EAR) system run by CalRecycle, as currently utilized for other laws that govern local jurisdiction diversion requirements such as SB 1383, AB 341, and AB 1826 compliance. This existing system can be updated to require local jurisdictions to self-report SB 54 compliance by certifying whether they collect the required recyclable or compostable covered material categories.

Footnotes:
2 Public Resources Code Section 42051.1(g)(1)

Response to O-53-3

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-54: Kahn, Soares & Conway, LLP on behalf of multiple organizations (Abby Taylor-Silva)

Comment O-54-1

On behalf of the signatory organizations (collectively referred to as “organizations”) listed below, we are submitting comments on CalRecycle's (the Department’s) draft regulatory language for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act) released on January 29, 2026. Together, our organizations represent companies that will potentially fall under this regulation's scope. The comments presented in this letter reflect the shared perspectives of the undersigned agricultural organizations; are submitted in response to your request for public input; and are specific to the updates made to the categorical exclusion process for food and agricultural commodity packaging (proposed § 18980.2(a)(2)) in the regulatory text.

The revised regulatory text raises significant legal and procedural concerns that must be addressed before the Department proceeds with adoption. As detailed in this letter, the proposed amendments: (1) are inconsistent with the enabling legislation and exceed the Department's statutory authority in conflict with California Government Code § 11349(d); (2) improperly insert a "mandatory" qualifier that mischaracterizes the U.S. Food and Drug Administration (FDA)'s regulatory framework and contradicts the statutory language; (3) constitute substantive regulatory changes requiring an updated Standardized Regulatory Impact Assessment under California Government Code § 11346.3; (4) are impermissibly vague and fail to provide adequate clarity to regulated entities as required by California Government Code § 11349(c); and (5) violate fundamental California Administrative Procedure Act requirements for clarity, consistency, and reasonableness.

For these reasons, we urge the Department to substantially revise proposed § 18980.2(a)(2), reverting to the August 22, 2025 draft regulatory text as a baseline and limiting any amendments to clarifications that enhance procedural transparency, without altering the scope, intent, or accessibility of the categorical exclusion or creating new barriers for agricultural producers subject to federal food safety or other requirements seeking to demonstrate federal-state regulatory conflicts. The following sections detail the legal and practical deficiencies in the current draft and the revisions necessary to bring the regulation into compliance with California law.

Response to O-54-1

No response to this portion of the commenter's submission is necessary because it is a summary of later, more detailed portions of the submission and does not add suggestions or objections not already expressed in those portions. CalRecycle has responded to those portions separately.

Comment O-54-2

PART I: CATEGORICAL EXCLUSION UPDATES ARE INCONSISTENT WITH ENABLING LEGISLATION

California Government Code § 11349(d) provides that the Office of Administrative Law shall review proposed regulations for, among other things, consistency. This includes being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

Statute Calls for Reasonable and Necessary Practices and Procedures

The revised categorical exclusion process set forth in the proposed § 18980.2(a)(2) fails to comply with the mandatory requirements of PRC § 41821.5(c), which expressly requires that CalRecycle "shall adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to implement this section." The new regulatory text, including expansive documentation requirements, undefined standards, and unclear evidentiary burdens are neither reasonable nor necessary to implement the statutory exclusion for food and agricultural commodity packaging under

PRC § 42060(b) and (d). The statute itself provides clear parameters for this exclusion: packaging that cannot reasonably comply with both the Act and federal food safety regulations is categorically excluded. Requirements imposed by other California state agencies must also be considered.

The Department's proposed regulatory scheme, however, transforms this statutory exclusion into a burdensome, resource-intensive application process with subjective Department determinations and a lack of procedural clarity regarding how exclusion notifications will be assessed. This approach directly contravenes the PRC § 41821.5(c) requirement that regulations be reasonable and necessary and is inconsistent with the Legislature's clear intent to exclude packaging where federal, and potentially California state, regulatory conflicts exist.

Response to O-54-2

CalRecycle rejects this comment. As explained in greater detail in response to comment O-54-5, Public Resources Code section 41821.5(c) is irrelevant because it is not part of the Act. While section 41821.5 was revised in the bill ("SB 54") through which the Legislature enacted the Act, that revision lies in Section 1 of SB 54 and concerns CalRecycle's regulations related to the Recycling and Disposal Reporting System, not regulations pursuant to the Act, which is Section 2 of the bill.

In contrast to the language the commenter erroneously assigns to it, the Act directs CalRecycle to "adopt regulations necessary to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met." (PRC section 42060(a).) Section 42060(b) establishes additional priorities for the regulations. It states that the "department shall ensure that any regulations adopted pursuant to this chapter consider guidelines and do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture and consider requirements imposed by other California state agencies" and that CalRecycle shall not "impose any requirement, including, but not limited to, a recycled content requirement, in direct conflict with a federal law or regulation . . ." (PRC §42060(b).) CalRecycle has interpreted that text to authorize exclusion of packaging for food and agricultural goods under certain circumstances. Section 18980.2(a)(2) implements that exclusion.

The commenter mischaracterizes the statutory context for CalRecycle's authority to adopt section 18980.2(a)(2). First, the commenter's assertion that the statute provides clear parameters that "packaging that cannot reasonably comply with both the Act and federal food safety regulations is categorically excluded" is incorrect. To the contrary, the only categorical, unconditional exclusions stated in the plain text of statute lie in Public Resources Code section 42041(e)(2) and do not include food and agricultural commodity packaging. Second, the commenter

asserts that section 42060(b) provides "clear parameters" for how CalRecycle should implement it but, notably, does not point to any parameters stated in the statute. Therefore, while CalRecycle interprets 42060(b) as authorizing a standard based on it not being reasonably possible to comply with both the Act and federal food safety laws, it does so without the benefit of statutory language providing express guidance on how to do so. To satisfy the "clarity" requirement in Government Code section 11349.1(a)(3), a "not reasonably possible" requirement, without greater specificity, is insufficient. CalRecycle has therefore developed objective, fact-based conditions to guide what it means for use of packaging that complies with both the Act and federal requirements to be "not reasonably possible."

The commenter also mischaracterizes the process established in section 18980.2(a)(2) as an "application process." The process set forth in subparagraphs (A) through (H) are clear, with the exclusion becoming effective based on notices, not applications, submitted to CalRecycle. The effectiveness of the notices are not conditioned on CalRecycle's full examination of their merits. The notices are only declined at the outset if they are facially incomplete.

Moreover, the evidentiary requirements of the exclusion are not unreasonably burdensome, as further explained in O-54-5 and O-54-7. See, also, CalRecycle's response to comment O-17-1, regarding claims that the exclusion requires testing and burdensome documentation.

Comment O-54-3

The Revised Regulations Improperly Add "Mandatory" Requirement Not Found in Statute

The proposed § 18980.2(a)(2) references PRC § 42060(b) and (d) as its statutory authority, but the proposed regulatory text materially deviates from the statutory language in a way that unlawfully narrows the exclusion. Specifically, the regulation repeatedly requires packaging to comply with "mandatory regulations, rules, or guidelines" issued by the United States Department of Agriculture (USDA) or FDA and consider requirements imposed by other California state agencies.

However, PRC § 42060(b)(2) does not limit the exclusion to "mandatory" federal requirements. The statute refers broadly to "regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities" and directs that "neither the department nor the PRO shall impose any requirement... in direct conflict with a federal law or regulation."

By inserting the "mandatory" qualifier throughout proposed § 18980.2(a)(2), the Department has impermissibly narrowed the scope of the statutory exclusion and created a conflict standard that does not appear in the enabling statute. The statute

requires the Department to ensure that regulations consider federal guidelines and avoid conflicts with federal regulations, not to categorically exclude consideration of guidance deemed non- mandatory that nevertheless creates practical or legal conflicts for agricultural commodity packaging or food safety concerns. This unauthorized addition of the "mandatory" requirement contradicts the Legislature's intent to provide a workable exclusion for agricultural packaging subject to the comprehensive federal regulatory landscape governing food safety.

Response to O-54-3

CalRecycle rejects this comment for the reasons articulated in response to Comment B-3-1. As explained in greater detail in that response, the regulations do not "categorically exclude consideration of guidance deemed non-mandatory that nevertheless creates practical or legal conflicts for agricultural commodity packaging or food safety concerns."

Comment O-54-4

The Regulation Fails to Adequately Implement the Statutorily Mandated Process for Health and Safety Exclusions

PRC § 42060(a)(3)(A) and (a)(4) expressly require the Department to establish a process to identify and exclude covered materials that present "unique challenges" in complying with the Act, and specifically materials that "cannot comply with [the Act] for health and safety reasons." With these revisions, the Department has failed to implement this statutory mandate in any meaningful way for food and agricultural commodities. While the Department may contend that proposed § 18980.2.4 provides a health and safety exemption process, that provision is fundamentally flawed for agricultural packaging in two critical respects.

First, it requires the Producer Responsibility Organization (PRO) to initiate exemption requests, creating an inherent conflict of interest. The PRO must petition to exempt certain packaging types on behalf of some member producers while knowing those exemptions will shift fee burdens to its other members.

Second, this section does not reference food safety as a standalone criterion, despite the Legislature's explicit recognition in PRC § 42060(b)(1) and (d) that packaging for food and agricultural commodities faces unique federal regulatory requirements related to "microbial contamination, structural integrity, or safety of packaging."

By failing to establish a workable health and safety exclusion process that addresses food safety and quality concerns for fresh produce and other agricultural commodities as required by PRC § 42060(a)(3) and (4), the Department has left agricultural producers with only the categorical exclusion process under PRC § 42060(b) and (d), which the Department has now rendered effectively impossible to utilize through the burdensome requirements of proposed § 18980.2(a)(2). This regulatory framework violates the Department's statutory obligation to provide meaningful pathways for

excluding packaging that cannot comply with the Act due to health and safety requirements.

Response to O-54-4

CalRecycle rejects this comment. First, CalRecycle rejects the first part of this comment for the reasons articulated in response to comment O-50-6. Exemption requests do not implicate the PRO's financial motivation regarding fees or shift fee burdens.

Second, it is contrary to the plain language of the regulations to assert that the exemptions cannot be justified by challenges such as "microbial contamination, structural integrity, or safety or packaging." It is not necessary for § 18980.2.4 to expressly reference food safety "as a standalone criterion" for food safety to be a valid basis for an exemption. Section 18980.2.4 expressly acknowledges challenges that may justify exemptions, and those challenges are broader than, but clearly encompass, those applicable to food and agricultural commodities. For example, section 18980.2.4(c)(4)(A) and (C) concern exemptions for "unique challenges" and "health and safety reasons" under Public Resources Code section 42060(a)(3) and (4), respectively, and both require applicants to explain whether an exemption is necessary to minimize various risks, such as those related to public health, the environment, and vulnerable populations. Moreover, the phrase "health and safety reasons," as used in section 18980.2.4(c)(4)(C), cannot reasonably be read to disallow contamination, structural integrity, and safety risks as bases for an exemption.

Comment O-54-5

The Department's Notification Requirements Impose Unreasonable Evidentiary Burdens Beyond Statutory Authority

The categorical exclusion in PRC § 42060(b) and (d) is grounded in fundamental principles of federal preemption: where compliance with both state and federal law is impossible, federal law controls. The Legislature recognized this by prohibiting requirements for packaging that cannot reasonably comply with both the Act and mandatory federal food safety regulations. However, the Department's implementation in proposed § 18980.2(a)(2) improperly shifts the entire burden of identifying and proving federal-state conflicts onto individual producers. This approach is inconsistent with both the statutory language and conflict preemption principles.

The revised exclusion effectively requires producers to prove that simultaneous compliance with SB 54 and federal law is absolutely impossible, an "impossibility" standard fundamentally at odds with California's conflict preemption doctrine. California courts have consistently held that conflict preemption analysis does not demand literal impossibility but rather asks whether compliance with both regulatory schemes is "reasonably possible." The California Supreme Court addressed this precise issue in *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th 135 (2023), explicitly rejecting

the proposition that a theoretical ability to comply with two laws suffices to avoid preemption. The Court held unequivocally that "compliance with both laws must be reasonably possible," and that “theoretical possibility” is not enough. *Id*. at 150. The Department's regulation contravenes this binding precedent by demanding absolute impossibility rather than applying the established standard of reasonable possibility.

The proposed regulation creates an impossible dilemma for producers. Those unable to satisfy the regulation's unattainable evidentiary standard face only two options: use packaging that violates federal food safety requirements and endangers public health or invest substantial capital in packaging alternatives without any assurance the Department will deem them adequate. This demonstrates that dual compliance is not reasonably possible under the standard articulated in *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th 135 (2023).

When SB 54 compliance requires producers to forgo packaging necessary to satisfy federal food safety standards, whether mandated by explicit regulation or effectively required through agency guidance and enforcement expectations, dual compliance becomes unreasonably possible, establishing a preemptive conflict. By forcing producers to choose between federal law violations or economically prohibitive investments in uncertain alternatives, the regulation exemplifies the "theoretical possibility" approach *Chevron* rejected. A framework offering only theoretical compliance through legally impermissible or economically infeasible choices contravenes fundamental conflict preemption principles.

The statute does not require producers to affirmatively demonstrate that federal law mandates the use of specific packaging materials or designs; rather, it requires that this Act’s regulatory requirement not apply to packaging where there is a conflict inherent to complying with both regulatory schemes.

By requiring entities to provide extensive documentation, including demonstrated compliance with the three-part test in proposed § 18980.2(a)(2) subparagraph (B)(i)-(iii), the Department has imposed requirements that exceed its statutory authority. The three-part test requires producers to prove: (i) there is no alternative that satisfies all applicable mandatory standards for safety and structural integrity, creates no new legal conflict with any law, and is otherwise lawful to use in California; (ii) it is impossible to eliminate or replace only the conflicting components and therefore avoid all legal conflicts; and (iii) it is impossible to redesign or replace the packaging as a whole, thereby avoiding all legal conflicts.

This framework requires producers to conduct exhaustive investigations into hypothetical packaging alternatives, component-by-component analyses, and complete packaging redesigns. Moreover, these requirements place producers in the untenable position of proving a negative: that no conceivable alternative exists anywhere in the world that could satisfy both federal food safety requirements and the Act’s mandates. The statute's use of "reasonably and necessary" in PRC § 41821.5(c) inherently incorporates considerations of commercial feasibility, economic practicability, and real-

world market availability, not a theoretical exercise in whether some alternative might exist in a laboratory or research setting.

The Department's regulatory scheme imposes a compliance burden that appears nowhere in the statute and effectively nullifies the categorical exclusion for all but those with extensive resources to navigate the Department's proposed process. The Department must revise proposed § 18980.2 to reflect the California Supreme Court's *Chevron* standard by assessing whether dual compliance is practically feasible, not merely theoretically conceivable.

Response to O-54-5

Comment rejected. CalRecycle rejects the commenter's argument that section 18980.2(a)(2) "improperly shifts the entire burden of identifying and proving federal-state conflicts onto individual producers." First, the argument's reliance on "conflict preemption principles" is flawed for the reasons stated in response to comment O-49-4. Second, the only "statutory language" on which the commenter relies is Public Resources Code section 41821.5(c), which uses the phrase "reasonable and necessary" and which the commenter claims "inherently incorporates" various commercial considerations. Section 41821.5(c), however, is not part of the Act. The commenter identifies no other statutory basis for its objections.

More generally, regarding the "not reasonably possible" standard and the burden associated with justifying exclusion under section 18980.2(a)(2), including the alleged requirement to "prov[e] a negative," CalRecycle rejects this comment for the reasons stated in response to comments B-3-1 and O-54-17. The criteria do not require elimination of all hypothetical packaging and packaging components and all hypothetical design options before a notice can give effect to the exclusion. Clauses (i) through (iii) are not divorced from the overall standard of "not reasonably possible . . . to comply." Businesses regularly make choices on packaging among the alternatives available to them and are reasonably expected to have up-to-date knowledge of such alternatives.

Commenter also loses sight of the fact that the notice, while it must include the elements set out in subparagraph (B), establishes the exclusion as long as it is complete and CalRecycle itself is not aware of additional alternatives. The notice process and criteria are designed to provide stakeholders with as much early certainty as possible by relying on a notice rather than application structure. Any subsequent process and determination by CalRecycle concerning further evaluation of the exclusion, as set out in subparagraph (E), involves an iterative review process that allows for submission of additional information supporting the exclusion. Then, the process established in subparagraph (E) means that the ultimate test of the notice's sufficiency is circumscribed by CalRecycle's requests for information, not an evaluation of whether the notice proved a negative.

Further, in stating that the regulations force producers "to choose between federal law violations or economically prohibitive investments in uncertain alternatives," commenter not only exaggerates the burden of establishing an exclusion but also ignore the availability of an exemption. Food or agricultural commodity packaging that does not meet the exclusion criteria does not drive its producer into "economically prohibitive investments in uncertain alternatives," but rather into an exemption that provides the producer relief from meeting the Act's recyclability and recycling rates requirements while still participating in the PRO.

Comment O-54-6

The Regulation Imposes an Impossible Standard While Ignoring the Statute's "Unique Challenges" Provision

Public Resources Code § 42060(a)(3)(A) and (a)(4) expressly require the Department to establish a process for identifying and excluding covered materials that present "unique challenges," reflecting SB 54's recognition that compliance must be balanced against practical feasibility and potential negative consequences, including health and safety impacts.

Rather than honoring this legislative framework, proposed § 18980.2(a)(2) imposes an absolute impossibility standard that disregards whether alternative packaging is economically viable, technologically feasible, authorized for food contact, commercially scalable, or would produce environmental benefits proportionate to its costs. The regulation ignores whether mandating packaging changes would create greater harm through increased food safety risks, additional environmental impacts from material use or transportation, or economic disruption, while yielding minimal environmental benefit. By demanding absolute proof that no alternative exists rather than assessing practical feasibility, the regulation contradicts the Legislature's intent to temper environmental objectives with real-world constraints.

Response to O-54-6

CalRecycle rejects this comment. The unique challenges exemption is implemented separately in the regulations at section 18980.2.4, and food and agricultural commodity packaging may be entitled to an exemption under that section. As made clear in section 18980.2.4(c)(4)(A)(iii), potential justifications for that exemption (or the exemption for health and safety risks) include practical infeasibility, economic disruption, environmental impacts, and the other risks the commenter identifies. Furthermore, as explained in response to comment B-3-1, exemptions for "unique challenges" do not require the same "not reasonably possible" showing required under section 18980.2(a)(2). Consistent with the commenter's demand that "compliance must be balanced against practical feasibility," exemptions are available if the challenges render compliance "impractical." See section 18980.2.4(f)(2)(A).

Lastly, for the reasons articulated in responses to comments B-3-1 and O-54-5 CalRecycle rejects commenter's assertion that section 18980.2(a)(2) imposes "an absolute impossibility standard."

Comment O-54-7

PART II: THE "MANDATORY" QUALIFIER MISCHARACTERIZES FDA'S REGULATORY FRAMEWORK AND CONTRADICTS STATUTORY LANGUAGE

The proposed § 18980.2(a)(2) repeatedly requires packaging to comply with "mandatory regulations, rules, or guidelines" issued by USDA or FDA as a prerequisite for categorical exclusion. This narrow framing fundamentally misunderstands how FDA regulates food packaging and improperly restricts the scope of the categorical exclusion in two critical ways.

First, FDA does not regulate food packaging through prescriptive mandates specifying that specific products must use particular packaging materials or designs. Rather, FDA's regulatory framework establishes performance-based requirements: packaging must protect food from contamination, must not itself contaminate the food through chemical migration or leaching, must be composed of food-safe materials appropriate for the intended use and must undergo food contact notification review where required.

Through substantial research and development investments, producers and suppliers have developed packaging materials that reliably satisfy these federal food safety requirements, even though no federal rule explicitly "mandates" the use of any particular packaging material or design. The "mandatory" aspect of FDA’s regulation under the Federal Food, Drug, and Cosmetic Act is the obligation to ensure packaging protects food from risk while not creating new risks. It is not a directive to use specific materials, as was clearly recognized by the earlier version of § 18980.2(a)(2), which focused on “standards to prevent microbial contamination or to maintain the safety or structural integrity of packaging”. By inserting the "mandatory" qualifier, the Department has created a false distinction that does not reflect how federal food safety law operates.

Second, FDA routinely issues guidance documents which provide agency interpretation of federal statutes describing agency expectations of compliance from food producers. Similar to CalRecycle guidance documents, these function as the operational rulebook under which FDA inspectors and regulated entities operate. While not codified regulations under the Administrative Procedure Act (5 U.S.C. § 551 et seq.), these guidances establish the compliance standards that producers must meet to avoid enforcement action under Prohibited Acts (21 U.S.C. § 331) and ensure food safety, regardless of CalRecycle’s interpretation of these guidelines as mandatory or otherwise. The Department's insistence on "mandatory" regulations, rules, or guidelines ignores this reality and would exclude from consideration documents that govern day-to-day food safety compliance in the food industry.

Attachment A, incorporated herein, provides further information on key components of federal food safety regulatory compliance, as prepared by David Acheson, MD, global food safety consultant and former FDA Associate Commissioner for Foods.

Critically, the word "mandatory" appears nowhere in the statutory text of PRC § 42060(b)(1), (2) or (d) regarding the categorical exclusion for packaging subject to federal-state conflicts. The Legislature did not limit the exclusion to conflicts with "mandatory" federal requirements. By adding this qualifier, the Department has impermissibly narrowed the statutory exclusion and created an interpretation inconsistent with both the text of SB 54 and the realities of federal food safety regulation, including packaging that federal agencies effectively require through guidance documents, compliance expectations, or practical application of statutory standards.

Consistent with the statutory language, CalRecycle must remove the "mandatory" qualifier and restore the exclusion's broader scope to protect any packaging needed to comply with federal food safety or agricultural standards.

Response to O-54-7

CalRecycle rejects this comment. As also explained in response to comment B-3-1, use of the term "mandatory" is appropriate, and the commenter's own explanation of the federal regulatory framework confirms as much. The commenter states that the "FDA's regulatory framework establishes performance-based requirements" and that FDA regulations have a "mandatory aspect." Relatedly, the commenter states that "guidance documents . . . provide agency interpretation of federal statutes describing agency expectations of compliance from food producers." In other words, those documents explain requirements of federal regulations. "Mandatory" is a synonym for "required" and thus accurately describes application of the regulatory framework.

The commenter's objection to the word "mandatory" appears to be that the FDA's regulatory framework does not rely on "prescriptive mandates specifying that specific products must use particular packaging materials or designs." But nowhere does section 18980.2(a)(2) suggest that "mandatory" refers only to such "prescriptive mandates" for particular materials or designs. The term is plain on its face and encompasses any requirement imposed on packaging for food and agricultural goods, including performance standards.

CalRecycle recognizes federal laws and regulations do not ordinarily require that food and agricultural commodity packaging be of a specific type or use specific designs, materials, or components food and agricultural commodity packaging. Instead, federal laws and regulations set mandatory performance standards applicable, such as a requirement that packaging prevent contamination or that it is safe for contact with food. Documents that may not be described as "mandatory" themselves but are guidance, best practices, and recommendations

for the specific type, format, and material of packaging published by government agencies, industry associations, standards development organizations, or academic institutions, are nevertheless relevant to the exclusion process. This is because they explain the underlying standards that packaging must meet and that the particular packaging for which the exclusion is sought is designed to meet those standards. Further, and with respect to commenter's second point, to the extent a federal agency's guidance provides that failure to meet particular standards will result in enforcement, such guidance logically must be considered "mandatory."

The commenter's assertion that the word "mandatory" thus excludes consideration of "documents that govern day-to-day food safety compliance in the food industry" is therefore unwarranted. Notices submitted pursuant to section 18980.2(a)(2) may reference such documents to explain how the utilized packaging meets the underlying standards and why other materials and designs would fail to do so. With the assistance of such publications, entities can show that packaging qualifies for the exclusion by explaining how they have considered whether other packaging that avoids the cited conflict with federal requirements and concluded that it is not. Such an explanation does not require considering merely theoretical alternatives or meeting an impossible "proving a negative" standard.

Lastly, the specific wording of Public Resources Code section 42060(b)(2) also supports use of the term "mandatory." That provision refers to a "direct conflict with a federal law or regulation." Then, it uses the terms "rules" and "guidelines" as examples of such restrictions, not an expansion of what such restrictions may be. A direct conflict can logically only refer to mandatory provisions (i.e., requirements) of federal law because a merely voluntary provision cannot constitute an obstacle to compliance with both state and federal law. The addition of the word thus adds clarity to the regulations by establishing that a merely voluntary federal standard does not create a direct conflict between the requirements of the Act and federal law. As explained, this does not, however, mean that rules and guidelines are irrelevant to a determination of an exclusion.

Comment O-54-8

PART III: THE REVISED CATEGORICAL EXCLUSION PROCESS CONSTITUTES A SUBSTANTIVE REGULATORY CHANGE REQUIRING AN UPDATED STANDARDIZED REGULATORY IMPACT ASSESSMENT

The extensive revisions to proposed § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated Standardized Regulatory Impact Assessment (SRIA) under California Government Code § 11346.3. These are not minor technical corrections appropriate for a 15-day comment period; rather, they fundamentally alter the scope, burden, and accessibility of the categorical exclusion for food and agricultural commodity packaging.

Material Changes in Regulatory Burden

The Department previously proposed regulatory text addressing the categorical exclusion that imposed more reasonable requirements on regulated entities. The current 15-day revisions transform a straightforward notification process into a multi-layered regime requiring extensive legal and technical analysis. Specifically, the revised regulations now require entities to:

- Conduct exhaustive investigations to prove that no packaging exists that satisfies "all applicable mandatory standards for safety and structural integrity," creates no new legal conflict with "any law," and is "otherwise lawful to use in California" (proposed § 18980.2(a)(2)(B)(i))
- Perform component-by-component analyses demonstrating it is impossible to eliminate or replace only the conflicting components (proposed § 18980.2(a)(2)(B)(ii))
- Prove it is impossible to redesign or replace the packaging as a whole (proposed § 18980.2(a)(2)(B)(iii))
- Identify and analyze conflicts not just with federal regulations, but with any provision of "any law" (proposed § 18980.2(a)(2)(B)(i))
- Navigate undefined Department review processes with subjective standards (proposed § 18980.2(a)(2)(C)-(E))

These requirements will necessitate that agricultural businesses retain legal counsel to analyze complex federal-state regulatory conflicts and hire packaging design engineers to evaluate the feasibility of hypothetical alternative packaging. This represents a dramatic increase in compliance costs that was not contemplated in the Department's original economic analysis.

Impossibility of Compliance Under the Revised Standard

The revised regulations create an impossible compliance standard by requiring businesses to prove a negative: that no conceivable alternative exists anywhere that could satisfy both federal food safety requirements and SB 54 while creating no conflict with "any law." Most agricultural producers cannot reasonably be expected to conduct a global search for theoretical packaging alternatives, evaluate each against the entirety of California and federal laws, and definitively prove that no compliant option exists. The requirement to demonstrate compliance with "any law", not just the Act and federal food safety regulations, extends the analysis beyond the expertise and resources available to most agricultural businesses.

Moreover, the regulation places producers in an untenable position: if they cannot meet this impossible evidentiary burden, they must either (1) sell their products in packaging that does not meet federal food safety standards, thereby violating federal law and

endangering public health; or (2) make substantial capital investments in packaging redesign and retooling without certainty that the Department will accept their determination of exclusion. This choice was not analyzed in the original SRIA and represents a fundamental change in the regulatory framework.

Response to O-54-8

Comment rejected. The comment incorrectly asserts that Government Code section 11346.3 requires an updated Standardized Regulatory Impact Assessment because there have been revisions that "constitute substantive regulatory changes." There is no such "trigger" in Government Code section 11346.3; rather, Government Code section 11346.3 requires a state agency to assess the economic impacts of regulations, and the scope of such assessment is dictated by a dollar amount determination (see, Gov. Code section 11342.548). The comment also appears to conflate the economic assessment requirement of Government Code section 11346.3 with the provision of the Administrative Procedure Act that allows a 15-day public comment period for substantial changes to the previously noticed regulation text that are sufficiently replated to the original regulatory proposal. The comment asserts that the revisions to proposed section 18980.2(a)(2) are not "minor technical corrections appropriate for a 15-day comment period; rather, they fundamentally alter the scope, burden, and accessibility of the categorical exclusion for food and agricultural commodity packaging," However, that is not the legal standard for determining whether a 15-day comment period is appropriate. The correct standard can be found by reviewing Government Code section 11346.8(c) and at Title 1 of the California Code of Regulations section 40 and 42. Application of the correct legal standard to the revisions to proposed section 18980.2(a)(2) concludes that a 15-day comment period was appropriate because while the revisions to proposed section 18980.2(a)(2) may be substantial, they are also sufficiently related to the original regulatory proposal. Finally, CalRecycle did evaluate whether any changes were needed to the economic analysis required by Government Code section 11346.3(c) and concluded that none was required. As indicated in response to comment B-3-1, the revisions to proposed section 18980.2(a)(2) do not make the sweeping changes alleged in this comment.

Regarding the assertions in the portion of this comment under the heading "Impossibility of Compliance Under the Revised Standard," CalRecycle has responded to those and similar assertions in the responses to comments B-3-1 and O-54-5.

Comment O-54-9

Requirement for Least Burdensome Alternative

California Government Code § 11346.3(a) requires the Department to consider a regulation's potential for adverse economic impact on California businesses and

individuals and describe reasonable alternatives to the regulation that would lessen any adverse impact on small businesses. The Department previously proposed a less burdensome regulatory framework for the categorical exclusion. By substantially increasing the evidentiary and procedural burdens in these 15-day revisions without updating the SRIA to analyze this increased cost, the Department has violated its statutory obligation to consider and adopt less burdensome alternatives (Gov. Code § 11346.36 (b)(2)). The original regulatory proposal demonstrably achieved the same statutory purpose, implementing the categorical exclusion for packaging subject to federal-state conflicts, at lower cost to producers.

Response to O-54-9

Comment rejected. As stated in responses to comments O-59-8 and B-3-1, CalRecycle evaluated the revisions to proposed section 18980.2(a)(2) and determined that they did not alter the economic analysis conducted for the proposed regulations as originally proposed. Further, CalRecycle rejects the notion that the previous version of proposed section 18980.2(a)(2) presented requirements that were less burdensome on the regulated community. Instead, the previous version of proposed section 18980.2(a)(2), while functionally requiring the same thing, did so in a less clear way that may have been confusing to the persons impacted by the provision (as is evidenced by the comments received regarding the provision). The revisions are meant to remedy this issue in compliance with Government Code section 11349(c), which requires regulations to be written so that their meaning will be easily understood by the entities directly affected by them (see also, 1 CCR section 16).

Comment O-54-10

SRIA Update Must Focus More Comprehensively on Producer Costs Across Alternatives

The current SRIA deviates from the standard cost-benefit analysis typically required for major regulatory actions. The analysis focuses primarily on fees to the PRO and producer reporting costs, while failing to adequately consider the true costs of regulatory compliance and implementation for agricultural producers. This narrow focus obscures the substantial economic burden the regulations will impose on California's agricultural sector.

Specifically, the SRIA estimates the cost of switching packages from one material to another at $10.2 billion but provides no meaningful context for this figure and models compliance using existing infrastructure, an assumption that may not be realistic for food and agricultural commodity packaging where specialized food-grade materials, food safety certifications, and federal approvals are required. The analysis does not account for the extended timelines, new packaging material availability, technical expertise, and capital investments required to transition food packaging to compliant alternatives while maintaining federal food safety compliance.

Failure to Address Competitive Disadvantage

The SRIA assumes that covered material costs will be passed on to consumers with no meaningful consideration of how increased packaging costs will make California-based agricultural firms less competitive in national and international markets. Fresh produce and other agricultural commodities are sold in highly competitive markets where small price differences per unit can influence market share. California producers competing against out-of-state and foreign producers who are not subject to the Act's requirements cannot simply pass through costs without losing market position. The SRIA's failure to analyze this competitive dynamic and its potential impact on California's agricultural economy represents a significant analytical gap.

Response to O-54-10

Comment rejected. The comment relies on the incorrect premise that the revisions to proposed section 18980.2(a)(2) do more than they do. As is stated in the response to comment B-3-1, the revisions do not alter the standard by which exclusions for food and agricultural commodities are determined compared to the version of the regulations circulated for the 45-day comment period. The clarification of the standard through criteria does not trigger a need to update the SRIA and the comment is outside the scope of the 15-day comment period. Nevertheless, the SRIA adequately analyzed the cost of switching packages from one material to another, relying on underlying data to present the Department's best estimate of the burden to all impacted businesses. A more granular analysis is not dictated by the Administrative Procedure Act, Department of Finance, or applicable regulations.

Comment O-54-11

Omission of Public Health and Food Safety Impacts

Most troublingly, the SRIA purports to address "health, safety, and welfare of California residents" (page 9) but entirely fails to consider the public health costs associated with foodborne illness that could result from inadequate food packaging. The regulations create scenarios where producers, unable to meet the impossible evidentiary burden of proposed § 18980.2(a)(2), may be forced to use packaging that does not adequately protect food from contamination or may abandon California markets entirely, reducing food availability and increasing prices.

The SRIA also fails to analyze the environmental and public health impacts of increased food waste. Packaging for fresh produce and other perishable agricultural commodities serves critical functions in extending shelf life, preventing spoilage, and reducing food waste. If producers cannot access appropriate packaging materials due to the barriers created by proposed § 18980.2(a)(2), increased food waste, with its environmental impacts, is a foreseeable consequence. This omission is particularly significant given that the Act itself is premised on environmental protection goals; an analysis that

ignores the environmental impacts of increased food waste due to how the regulation is currently drafted is fundamentally incomplete.

Response to O-54-11

Comment rejected. This comment's treatment of the analysis in the SRIA is fundamentally flawed because it relies on the incorrect premise that the revisions to proposed section 18980.2(a)(2) require producers to use packaging that will cause food contamination. That is not the case, as is stated in the response to comment B-3-1.

Comment O-54-12

Requirement for Comprehensive Updated Analysis

California Government Code §11346.3 requires the SRIA to assess the economic impact of proposed regulations, including their impact on California businesses, individuals, and the state's economy. The current SRIA's focus on narrow compliance costs while ignoring (1) the professional services costs imposed by proposed § 18980.2(a)(2)'s evidentiary requirements, (2) the competitive disadvantage to California agricultural producers, (3) public health costs from potential foodborne illness, and (4) environmental costs from increased food waste, renders the analysis inadequate to support informed regulatory decision-making.

An updated SRIA must comprehensively analyze these impacts and must present the revised proposed § 18980.2(a)(2) alongside the less burdensome alternatives previously proposed by the Department, allowing for meaningful comparison of regulatory options and their respective costs and benefits. An updated SRIA is required to properly evaluate these economic impacts and to ensure the Department complies with its statutory obligation to adopt the least burdensome regulatory alternative that achieves the Legislature's objectives.

Response to O-54-12

Comment rejected. This comment's treatment of the analysis in the SRIA is fundamentally flawed because it relies on the incorrect premise that the revisions to proposed section 18980.2(a)(2) do more than they do. That is not the case, as is stated in the response to comment B-3-1. Furthermore, this comment improperly states that the department is required to adopt the "least burdensome regulatory alternative that achieves the Legislature's objectives." While it is true that state agencies must consider the regulatory proposal's economic impact on businesses (see Gov. Code 11346.3(a)) and compare alternatives , the comparison of alternatives referenced by the commenter does not require the state agency to pick the least burdensome alternative. Rather, Government Code section 11346.36 (b), among other things, requires the state agency to compare "regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption, amendment, or repeal of regulations

necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed, or the most cost-effective alternative to the economy and to affected private persons that would be equally effective in implementing the statutory policy or other provision of law." It is also necessary to read this requirement in conjunction with all other requirements of the Administrative Procedure Act, including Government Code section 11349(c), which requires regulations to be written so that their meaning will be easily understood by the entities directly affected by them (see also, 1 CCR section 16). Nevertheless, as addressed in the response to comment O-54-9, the previous version of proposed section 18980.2(a)(2) did not present requirements that were less burdensome on the regulated community.

Comment O-54-13

PART IV: AMENDMENTS ARE IMPERMISSIBLY VAGUE AND FAIL TO PROVIDE ADEQUATE NOTICE TO REGULATED ENTITIES

The proposed § 18980.2(a)(2)(B) and its subsections (i) through (iii) establish evidentiary requirements that are so vague and ambiguous that regulated entities cannot reasonably determine what information will satisfy the Department's review. This lack of clarity violates fundamental principles of administrative law requiring that regulations provide fair notice of what is required for compliance. California Government Code § 11349(c) provides that the Office of Administrative Law shall review proposed regulations for, among other things, "clarity," which is defined as "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The current draft fails to reach this standard in at least three critical respects.

1. "All Applicable Mandatory Standards for Safety and Structural Integrity"

The proposed § 18980.2 (B)(i) requires demonstrating that no alternative exists that "satisfies all applicable mandatory standards for safety and structural integrity of packaging." The regulation provides no definition of what constitutes "applicable mandatory standards" or whose determination of "applicability" governs. Must the entity identify and analyze every FDA regulation, USDA standard, California food safety requirement, and industry standard that could conceivably relate to the packaging? Does this extend to state-specific requirements in other jurisdictions if the product is sold interstate? What if the product is sold to international markets? What level of documentation is required to prove an alternative does not satisfy these standards?

The phrase "safety and structural integrity" is similarly undefined. Does "structural integrity" mean the packaging must maintain its physical form during the entire distribution chain, or does it refer to something more specific? Does "safety" encompass only direct food contact safety, or does it extend to tamper-evidence, worker safety in handling, and other safety considerations? Without clear definitions, entities cannot know what evidence the Department will deem sufficient.

Response to O-54-13

CalRecycle rejects this comment.

The proposed text does not establish an unreasonable or unclear scheme. To meet the criterion in § 18980.2 (B), a notice identifies the underlying federal requirements that the packaging is designed to meet and may support that assertion with any guidelines, guidance, best practices, or other documentation. Subclauses (i) through (iii) require consideration of whether there is other packaging that might be suitable as the alternative described in subparagraph (B), but make it clear that an alternative would only preclude an exclusion if in resolving the conflict with the Act, it creates no new conflicts.

Specific to section 18980.2(B)(i), the commenter contends that the regulations provide no definition for "applicable mandatory standards." However, the meaning of the phrase is plain in the context of the section in which the phrase is used. Section 18980.2(a)(2) references compliance with "mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration." The phrase "applicable mandatory standards" is a reference back to the same regulations, rules, and guidelines.

The commenter also contends that the phrase "safety and structural integrity of packaging," is vague, but that phrase is plain on its face. Moreover, in section 18980.2(a)(2) and (a)(2)(B), it is circumscribed such that it only concerns the packaging and legal restrictions applicable to packaging. That usage is readily understandable without qualification, and the specific federal laws cited in paragraph (2) provide additional context to clarify the phrase's meaning.

Comment O-54-14

2. "Creates No New Unavoidable Legal Conflict with Any Law"

The proposed § 18980.2 (B)(i) also requires proving that no alternative exists that "creates no new unavoidable legal conflict with any law." This standard is extraordinarily broad and fundamentally unclear. "Any law" presumably encompasses all federal statutes and regulations, all California statutes and regulations, and potentially local ordinances and the laws of other states if the product moves in interstate commerce. How is a producer expected to analyze a proposed packaging alternative against the entirety of state, federal and international law to confirm it creates no conflict with "any law"?

Furthermore, what constitutes a "new unavoidable legal conflict"? Is this limited to direct conflicts where compliance with one law makes compliance with another impossible, or does it extend to situations where an alternative packaging material might trigger additional regulatory requirements? The regulation provides no guidance, leaving regulated entities unable to determine the scope of their analytical burden.

The requirement that the conflict be "unavoidable" adds another layer of ambiguity. Does this mean unavoidable through any means, including seeking regulatory variances or exemptions? Or does it mean unavoidable in the practical sense that compliance pathways exist but are economically infeasible? Without clarification, different entities may interpret this requirement differently, and the Department may apply inconsistent standards in its review.

Response to O-54-14

CalRecycle rejects this comment. The meaning of the phrase "creates no new unavoidable legal conflict with any law" is clear in the context of the regulatory section and as applied. The phrase is intentionally broad because it is intended to cover legal conflicts beyond only those due to federal food safety standards. For example, an alternative packaging type might meet the Act's requirements and meet federal food safety requirements, but it is still not an alternative that precludes an exclusion if using the packaging would infringe on a patent. Similarly, an alternative that meets the Act's requirements and federal food safety requirements is nevertheless not an alternative that precludes an exclusion if a more stringent state law deems its material a contaminant. The phrase "legal conflict with any law" is thus the appropriate term with the appropriate scope.

Moreover, the commenter's assertion that the regulation is unclear, or that it unreasonably requires businesses to consider whether a potential alternative could lawfully be used, is disingenuous, because the consideration of legal requirements is one businesses necessarily, routinely undertake in the course of all business decisions.

Nor does the concept of "unavoidable" render the text ambiguous. The overall context of section 18980.2(a)(2) makes clear that it concerns the scenario where it is not reasonably possible to lawfully use packaging that resolves the conflict with federal law.

Comment O-54-15

3. Subsections Create Untenable Standard for Assessing Possibility

The proposed § 18980.2(B) establishes an overarching requirement to "explain why no reasonably possible alternative packaging or packaging components that would avoid the conflict is available." However, subsections (i) through (iii) impose a contradictory and unworkable three-part test that appears to require absolute impossibility rather than reasonable impossibility.

Subsection (i) requires demonstrating that no alternative exists that satisfies all standards and creates no conflict with "any law", a standard of absolute impossibility. Subsections (ii) and (iii) similarly mandate proving "it is not possible" rather than "it is

not reasonably possible" to obtain alternatives or transition to them. This departure from the parent subsection's "reasonably possible" standard is both unexplained and legally inconsistent.

The standard of "not reasonably possible" inherently incorporates considerations of economic feasibility, commercial availability, risk mitigation, technical practicability, and real-world constraints. This approach aligns with California Government Code § 11346.3's requirement that regulations be technically feasible and PRC § 42821.5(c)'s mandate to consider compliance costs and technical feasibility. By contrast, "not possible" suggests an absolute impossibility standard requiring proof that no alternative could exist under any conceivable circumstances, a standard inconsistent with established administrative law principles.

A workable reasonable possibility standard must account for:

- Cost of alternative packaging relative to current packaging and impact on product viability
- Commercial availability of alternative materials in quantities sufficient for production needs
- Technical feasibility of transitioning production lines to new packaging formats
- Timeline required to obtain necessary FDA approvals for new food contact materials
- Impact on product shelf life, food safety, and regulatory compliance across jurisdictions

Response to O-54-15

CalRecycle rejects this comment. The commenter misquotes the regulations. Section 18980.2(a)(2)(B) does not state that the showing requires "explain[ing] why no reasonably possible alternative" is available. Instead, 18980.2(a)(2) states the overall standard that it is "not reasonably possible . . . to comply" with both the Act and federal food safety laws. The rest of section 18980.2(a)(2) gives meaning to that standard. It sets forth what the notice of exclusion must include and how CalRecycle may subsequently assess whether notices in the database required under subparagraph (D) should be deemed no longer eligible for the exclusion. To remain in the database, notices (and additional information that CalRecycle determines is necessary) need to show that it is not reasonably possible to use alternative packaging or packaging components, an analysis that, as clarified in clauses (i) through (iii), concerns the availability of alternative packaging that does not create new legal conflicts.

The commenter's incorrect formulation also ignores the specific wording of subparagraph (B). In that subparagraph, "such alternative" refers only to packaging that would avoid the cited legal conflict, so clause (i) only requires

evaluation of alternatives identified as avoiding the conflict. Moreover, clauses (i) through (iii) are not divorced from the references to reasonableness subparagraph (B). Businesses regularly make choices on packaging among the alternatives available to them and are reasonably expected to have up-to-date knowledge of such alternatives. The criteria do not call for evaluation of hypothetical alternatives or require that the producers prove a negative.

CalRecycle recognizes that the bulleted criteria outlined by commenter are valid and significant considerations, but they are appropriate for a determination of an exemption under 18980.2.4, not an exclusion under 18980.2.

Comment O-54-16

The Department's Role Is to Recognize Conflicts, Not to Dictate Packaging Alternatives

With respect to the Department's proposal to dictate alternative packaging, we concur with the California Chamber of Commerce's comments that SB 54 does not provide the Department with this Authority. Specifically, we incorporate and reiterate the following:

"…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."

Response to O-54-16

CalRecycle rejects this comment for the reasons articulated in response to comment O-49-6.

Comment O-54-17

Unbound Discretion Will Lead to Inconsistent and Arbitrary Regulatory Application

The revised exclusion process vests excessive discretion in the Department to deny exclusions based on hypothetical alternatives or subjective interpretations of "reasonably possible." The draft regulation provides no guidance on what level of analysis, documentation, or evidence will satisfy the Department's review, leaving it free to apply inconsistent standards across different exclusion requests, industry sectors, or time periods.

This framework enables the Department to continually raise new theories or identify previously unmentioned hypothetical packaging alternatives during the review process, then deny exclusions based on the producer's failure to address these after-the-fact concerns. Producers cannot reasonably anticipate and disprove every theoretical alternative the Department might conceive during its review, creating a moving target that renders exclusion effectively unattainable.

This regulatory ambiguity violates the administrative law principle that regulations must provide fair notice and predictable application. The resulting uncertainty renders outcomes arbitrary and discourages capital investment in California agriculture, as producers cannot make informed business decisions when exclusion determinations depend on unstated Department criteria rather than objective, transparent standards that ensure consistent regulatory application.

By granting the Department essentially unlimited and standardless authority to deny exclusions based on hypothetical alternatives and undisclosed criteria, the revised regulation eviscerates the categorical exclusion the Legislature created in Public Resources Code § 42060(b). The Department must establish transparent, objective standards for evaluating conflict claims and ensuring consistent application. Additionally, § 18980.2 must be amended to apply "reasonably possible" uniformly throughout, achieving internal consistency with the statutory language and alignment with legislative requirements for feasibility-based, rather than impossibility-based, determinations.

Response to O-54-17

Comment rejected.

First, for the reasons articulated in Comment B-3-1 and O-54-7, the regulations do not call for consideration of hypothetical or theoretical alternatives in the exclusion process. The commenter's assertion that the Department may "continually raise new theories or identify previously unmentioned hypothetical packaging alternatives" is a clear misstatement of the regulatory language.

Second, the regulations create clear, implementable standards and process for predictable application of the exclusion. The elements of the notice that must be submitted to the Department are clearly articulated in subparagraph (B): The notice must (1) "identify all specific provisions of the Act and the mandatory federal regulations, rules, or guidelines that are in conflict" and (2) "specifically describe all packaging and packaging components to be excluded and the associated products." The notice must then "demonstrate that it is not reasonably possible to use any alternative packaging or packaging components that would avoid the conflict." The criteria a determination must consider are also clearly spelled out in (i)-(ii).

Contrary to commenter's unsupported assertions, these are transparent, objective standards, not "undisclosed criteria." In fact, the notice process and criteria are designed to provide stakeholders with as much early certainty as possible by relying on a notice rather than application structure. Commenter loses sight of the fact that the notice, while it must include the elements set out in subparagraph (B), establishes the exclusion as long as it is complete.

To the extent commenter's concerns are with subparagraph (E), which allows the Department to request additional information supporting the determination of exclusion after the notice process, that provision is necessary to ensure that, when packaging options exist that can meet the requirements of both the Act and federal requirements, including because new packaging technology has brought new options to market, the Department can evaluate whether an exclusion continues to be appropriate. Similar to the notice process, there is nothing in the regulations that would allow merely theoretical alternatives to be considered in the subparagraph (E) review process, which utilizes the same transparent, objective standards.

Comment O-54-18

PART V: THE UPDATED DRAFT CONSTITUTES A VIOLATION OF APA REQUIREMENTS

As discussed extensively above, proposed § 18980.2 suffers from significant clarity deficiencies that impede effective implementation. This pervasive vagueness violates basic due process principles requiring that regulations provide fair notice of what conduct is required or prohibited. It also violates California Government Code § 11349 (c) and (d), which prohibits the Office of Administrative Law from approving regulations that are not clear and consistent. When a regulation's requirements are so unclear that

regulated entities cannot determine what evidence is necessary to demonstrate compliance, the regulation fails to provide the notice required by law and vests the Department with standardless discretion in applying the regulatory requirements.

The Office of Administrative Law has repeatedly applied this clarity standard in recent years. As an example, in its February 2025 disapproval of the California Air Resources Board's Low Carbon Fuel Standard (LCFS) Program regulations, OAL found multiple provisions violated the clarity standard because they could "reasonably and logically be interpreted to have more than one meaning," presented "information in a format that is not readily understandable by persons 'directly affected,'" and used "terms which do not have meanings generally familiar to those 'directly affected' by the regulation." (*Decision of Disapproval of Regulatory Action*, OAL Matter No. 2025-0103-01S (Feb. 25, 2025).)

OAL required CARB to revise ambiguous terms, clarify when discretionary authority would be exercised, define technical terminology unfamiliar to regulated parties, eliminate internal inconsistencies between provisions, and specify the processes and criteria that would govern agency decision-making, adding five additional months to the process.

The Department must substantially revise proposed § 18980.2(a)(2)(B) to provide clear definitions of key terms, explicit criteria for determining what constitutes sufficient evidence, and objective standards that will allow regulated entities to understand their obligations and the Department to apply the regulation consistently to avoid a similar situation.

Response to O-54-18

Comment rejected. For the reasons articulated in response to Comment O-54-17, the regulations meet the clarity and consistency standards of Government Code section 11349 (c) and (d). Commenter's unsupported claim that the regulations violate "due process principles requiring that regulations provide fair notice of what conduct is required or prohibited" fails for the same reasons.

Comment O-54-19

CONCLUSION

The categorical exclusion provisions in proposed § 18980.2(a)(2) must be substantially revised to comply with multiple statutory requirements that govern California rulemaking.

First, the regulations must align with PRC § 41821.5(c)'s requirement for "reasonable and necessary" implementation practices that do not impose unreasonable burdens, and with California Government Code § 11349.1(c) and (d)'s requirements for clarity and consistency with enabling legislation. The Department has exceeded its statutory authority by inserting the "mandatory" qualifier throughout proposed § 18980.2(a)(2), as PRC § 42060(b)(2) does not limit the categorical exclusion to "mandatory" federal requirements. Instead, it broadly references "regulations, rules, or guidelines" that

create conflicts. This unauthorized narrowing must be corrected to reflect the statute's actual language and the Legislature's intent to provide a workable exclusion for packaging subject to federal food safety requirements.

Second, the extensive revisions to § 18980.2(a)(2) constitute substantive regulatory changes that trigger the requirement for an updated Standardized Regulatory Impact Assessment (SRIA) under California Government Code § 11346.3. The dramatic increase in compliance costs, including the necessity for agricultural producers to retain legal counsel and packaging engineers to navigate the regulation's impossible evidentiary burdens, was not contemplated in the Department's original economic analysis and must be quantified to identify the least burdensome regulatory alternative as required by statute.

Third, the current draft fails California Government Code § 11349(c)'s requirement that regulations be written "so that the meaning of regulations will be easily understood by those persons directly affected by them," particularly with respect to the undefined terms "all applicable mandatory standards," "any law," and the conflicting standards of "reasonably possible" versus "not possible." The Department must substantially revise proposed § 18980.2(a)(2)(B) to provide clear definitions of key terms, explicit criteria for determining what constitutes sufficient evidence, and objective standards that will allow regulated entities to understand their obligations and the Department to apply the regulation consistently.

Finally, all regulatory amendments must align with California Government Code § 11346.3's requirement that regulations be technically feasible and PRC § 41821.5(c)'s mandate to consider compliance costs and technical feasibility. The Department must therefore reincorporate "reasonably possible" consistently throughout § 18980.2(a)(2), ensuring internal consistency with the parent statutory provision and alignment with governing statutory requirements for feasibility and practicability, rather than imposing an absolute impossibility standard that no regulated entity can meet.

For these reasons, we urge the Department to substantially revise proposed § 18980.2(a)(2), reverting to the August 22, 2025 draft regulatory text as a baseline and limiting any amendments to clarifications that enhance procedural transparency, without altering the scope, intent, or accessibility of the categorical exclusion or creating new barriers for agricultural producers subject to federal food safety or other requirements seeking to demonstrate federal-state regulatory conflicts.

Thank you for your consideration of our comments. Please contact us if you have any questions.

Response to O-54-19

Comment rejected. No response to this portion of the commenter's submission is necessary because it only summarizes the objections and recommendations already presented in comments O-54-1 through O-54-18, to which CalRecycle has responded individually.

Comment O-54-20
Addendum A

This letter summarizes several of the key components related to the mandatory requirements for food packaging that pertain to food safety in the United States. Broadly speaking food packaging must protect the food from various risks, it must not pose a risk to the food directly and it has to undergo regulatory approval prior to being used as food packaging.

Both the U.S. Department of Agriculture (USDA) – Food Safety and Inspection Service and the US Food and Drug Administration (FDA) have requirements for the packaging used with food products. This includes primary (food contact), secondary and tertiary packaging requirements. The USDA defers to the FDA for reviewing and approving all novel packaging materials or additives going into existing packaging materials. A petition process is known as the Food Additive Petition (21 CFR 171.1) that requests approval for a new food-contact substance which is reviewed by the Office of Food Additive Safety (OFAS). The petitioner must supply safety and environmental research data to OFAS for a review process, which may take months and requests for more information. While the FDA does not mandate the exact type of packaging material that is used for food the Agency does mandate that the packaging must meet the regulatory requirements to be safe.

The Food Safety Modernization Act (FSMA) is the statute which spells many new requirements for food production in the United States, and anything imported into the US. The requirements are designed to ensure safety though multiple levels of control, preventive actions, proper sanitation, and supply chain traceability. Food Manufacturers must comply with Good Manufacturing Practices (GMP) found in 21 CFR Part 117, participate in periodic FDA inspections of their operations, and ensure that all materials (including packaging) are safe for distribution and sale.

Some of the specific parts of this regulation include:

- 21 CFR 117.80(a)(2) - Appropriate quality control operations must be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable.

o This means the manufacturer must ensure that the packaging materials are safe for contact with the food, safe for all recommended actions while in the packaging (heating, freezing, etc.), and that the material is not using anything banned to be used with foods or a substance that may render the food unsafe.

- 21 CFR 117.80(c)(13) - Filling, assembling, packaging, and other operations must be performed in such a way that the food is protected against allergen cross-contact, contamination and growth of undesirable microorganisms.

o This means the product and all packaging is stored and manufactured in an area where no outside allergens will make it into contact with the food or its packaging. Packaging must be able to withstand its storage or filling conditions and not contribute to the growth of microorganisms. Certain types of packaging materials cannot be used as direct contact with foods since they can harbor microorganisms (e.g. cardboard).

- 21 CFR 117.130(c)(2)(vi) - The hazard evaluation must consider the effect of the following on the safety of the finished food for the intended consumer: Packaging activities and labeling activities, transportation practices, storage and distribution

o Packaging must be able to have a proper label placed on it. It must withstand transportation and distribution without compromising the product inside. If the package were to develop any seal breaks, the product inside can be contaminated and grow pathogens or spoilage microorganisms. This can get consumers sick if it happens.

- 21 CFR 117.35(e) - Non-food-contact surfaces of equipment used in the operation of a food plant must be cleaned in a manner and as frequently as necessary to protect against allergen cross-contact and against contamination of food, food-contact surfaces, and food-packaging materials.

o Packaging is often set or stored in areas that should not come in direct contact with food. The packaging must have the ability to be sanitized or cleaned before it is used if it comes into direct contact with a dirty surface. Additional regulations that deal with food packaging include the following:

- 21 CFR 1.908(a)(3)(i) - Sanitary Transport Rule

o There must be effective measures of packaging that would help protect food from contamination by raw foods or non-food items found on the same transportation load.

- 21 CFR Part 121 - Intentional Adulteration Rule

o Packaging is used as preventive measure against intentional adulteration. Packaging itself needs to be safe for use with food products, but it also must provide a tamper-evident seal that would make it obvious that someone has disturbed the product.

- 9 CFR 317.24(a) - Edible products may not be packaged in a container which is composed in whole or in part of any poisonous or deleterious substances which may render the contents adulterated or injurious to health. All packaging materials must be safe for their intended use within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended (FFDCA)

- 7 CFR 58.241(a) - Packages or containers used for the packaging of nonfat dry milk or other dry milk products shall be any clean, sound commercially accepted container or packaging material which will satisfactorily protect the contents through the regular channels of trade, without significant impairment of quality with respect to flavor, wholesomeness or moisture content under the normal conditions of handling. In no instance will containers which have previously been used for nonfood items, or food items which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products.

Other pertinent statements pertaining to packaging on the USDA website include:

- Meat and poultry products may not be packaged in a container composed of any substances that may adulterate the contents or be injurious to health. Packaging materials entering a meat or poultry plant must be accompanied or covered by a guaranty or statement of assurance from the packaging supplier. The guaranty must state that the material complies with the Federal Food, Drug and Cosmetic Act (FFDCA). It must also state the brand name, supplier, and conditions for use, including temperature and other limits.

- Plastic wrap, foam meat trays, convenience food dishes, and egg cartons have been approved for a specific use and should be considered one-time-use packaging. Bacteria from foods that these packages once contained may remain on the packaging and thus be able to contaminate foods or even hands if reused.

o The meat and dairy industry do not allow reusable packaging in many instances. There is too big of a risk for contamination with certain products that it is mandatorily single-use packaging.

In summary and as noted above there are numerous specific mandatory regulatory requirements regarding packaging of food to ensure it is kept safe and does not become adulterated either from the packaging itself or from breaches of the packaging.

Response to O-54-20

Comment rejected. No response to this comment is necessary because it only provides an overview of food safety laws to support comment O-54-7. To the extent this comment may be interpreted to concern the revisions made to the 45-Day Changes and therefore require a response, CalRecycle rejects is for the reasons stated in response to comment O-54-7.

O-55: Dairy Institute of California and Ag Council of California (Katie Davey)

Comment O-55-1

Dairy Institute of California represents milk processors and dairy product manufacturers based in California. Our organization's goal is to support our members' ability to operate sustainably, innovate and achieve efficiency in their own companies as they provide the highest quality dairy products to domestic and international markets. Agricultural Council of California (Ag Council) represents approximately 15,000 farmers across California ranging from small, farmer-owned businesses to some of the world's best-known brands.

On behalf of Dairy Institute and Ag Council's members, we submit these comments regarding CalRecycle's permanent regulatory text for the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). California's dairy product manufacturers range from international corporations to family-owned businesses, all dedicated to selling the finest dairy products to our customers. Given the complexity in the proposed regulation, we are deeply concerned about the feasibility for our members of all sizes to comply with various aspects of the permanent regulation. The permanent regulations are complex and difficult to interpret due to the use of technical legal terms and overly complicated language.

With regards to the proposed revision to Section 18980.02, we agree with the International Dairy Foods Association comments:

".....addition of the term "mandatory" – which is inconsistent with SB 54, as the statute refers to direct conflict with federal "guidelines" – and the proposed requirement that companies must demonstrate in detail that no other packaging alternative is "reasonably possible" to use raises the burden of proof so high that it will be impossible to obtain a categorical exclusion. Not only is this interpretation not authorized by SB 54, but this approach also does not accommodate food safety and other regulatory conflicts. For dairy, food safety and product shelf life are closely tied to its packaging, and the proposed regulations will result in food packaging that is integral to the safety and quality of dairy foods being outlawed."

Response to O-55-1

Comment rejected as described in response to comment O-42-2, which contains the separate comment quoted in this comment.

Comment O-55-2

Section 18980.2 Categorically Excluded Materials (a)(2)

Revisions to Section 18980.2 Categorically Excluded Materials are problematic and in contradictory to statute. The revisions restrict the scope of the exclusion as provided in the statute and impose new requirements not found in the statute. Together these changes effectively prevent dairy processors from utilizing the exclusion in PRC Section 42060(b)(1- 2) for the use of packaging materials needed to ensure food safety and compliance with federal requirements.

Dairy products are subject to federal standards of identity as well as safety and sanitation standards. The packaging dairy manufacturers utilize for their products is to ensure dairy products meet those standards. For instance, complex and sensitive consumer products like extended shelf life (ESL) milk and aseptic dairy-based beverages require specialized packaging designed to ensure product safety and quality, protect valuable nutrition attributes, preserve shelf life and prevent food waste.

Multi-layer cartons and opaque rigid PET packaging in combination with light-blocking flexible PET sleeves play a critical role in promoting public health and ensuring that nutritious dairy products remain widely available to all California consumers. ESL milk and aseptic dairy-based beverages are highly sensitive to light induced nutrient degradation and flavor damaging oxidation, especially under modern LED retail lighting, which accelerates the breakdown of vitamins important to human health such as riboflavin and vitamin A, and rapidly generates off flavors that make them unpalatable to consumers.

By blocking more than 99% of harmful light and offering strong oxygen and chemical migration barriers, multi-layer cartons and opaque rigid PET packaging with light-blocking flexible sleeves ensures that ESL milk and aseptic dairy-based beverage products maintain nutritional integrity and remain safe and palatable throughout distribution and household storage. These enhanced protective properties translate into a significantly longer unopened shelf life—up to 110 days—which directly reduces retail and household food waste and improves the overall affordability of ESL milk and aseptic dairy-based beverage products and their availability to all California consumers.

The need for cheese wrappers is another example. While federal standards of identity for cheese do not mention a specific packaging type, they do mandate specific moisture and pH levels, necessitating the use of Modified Atmosphere Packaging (MAP). Currently, this is only achievable through flexible films. Maintaining this controlled atmosphere is critical; any compromise risks mold growth and pathogen contamination, which would render the product 'adulterated' under federal and state law. Flexible films also extend product shelf-life, leading to the reduction of food waste. While glass or rigid plastic could be used these packages must be hermetic sealed requiring the use of a plastic or foil film barrier and will lead to a significant increase in more packaging than needed.

We urge CalRecycle to drop the inclusion of the word “mandatory” and restore the reference to standards in this section.

Response to O-55-2

Comment rejected. CalRecycle rejects this comment for the reasons stated in response to comment B-3-1, which makes the same recommendation as does this comment regarding "mandatory" and raises the same general objections concerning the scope and attainability of the exception.

Comment O-55-3

Section 18980.2 Categorically Excluded Materials (a)(2)(A-B)

The revisions to the exclusion pathway outlines in Section 18980.2(a)(2)(A-B) narrow the scope of the exclusion as provided by statutory text, impose requirements not provided for in statute and are extremely onerous to meet.

Milk innovation has led to the creation of complex and sensitive consumer products like extended shelf life (ESL) milk and aseptic dairy-based beverages (see Appendix A: Definitions) which require specialized packaging designed to ensure product safety and quality, protect valuable nutrition attributes, preserve shelf life and prevent food waste. As a result, refillable or consumer-returned containers cannot reliably meet FDA Pasteurized Milk Ordinance sanitation standards, making high-barrier single-use packaging necessary for food safety compliance. In this context, opaque rigid PET and light-blocking flexible sleeves are not just a commercial packaging choice, but are critical tools that support regulatory safety requirements, nutrition retention, waste reduction, and the affordability and availability of nutritious dairy products to all Californians.

We agree with Cal Chamber’s comments of the proposed revisions to this section.

“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."

It is nearly impossible for a dairy processor to prove that no alternative packaging exists to avoid a conflict between state and federal law. This requirement ignores supply issues with obtaining the volume of packaging materials at commercial scale let alone the compatibility of packaging materials with existing manufacturing equipment. Needing to re-tool or retrofit a dairy processing facility with new processing lines to accommodate a change in packaging is incredibly expensive.

Many of our dairy processors are operating in limited footprints and simply do not have the space to expand their facilities. Additionally, the cost to install new manufacturing equipment to accommodate the change comes with a hefty price tag ranging from an estimated $1.7 to $4.3 million for a small dairy processor and upwards of $40 million for a standard sized dairy processor. Industry sources estimate it will take 2- 3 years to source, build, ship and install new processing lines.

We respectfully request CalRecycle to reinstate the prior draft language in Section 18980.2 which provided a clear categorical exclusion for dairy, food and agricultural packaging necessary to meet FDA and USDA safety requirements and guidance.

Response to O-55-3

Comment rejected. Regarding "reasonably possible" and the burden associated with justifying exclusion under section 18980.2(a)(2), CalRecycle rejects this comment for the reasons stated in response to comment B-3-1. Regarding the commenter's reference to preemption principles, CalRecycle rejects this comment for the reasons stated in response to comment O-49-4.

Comment O-55-4

Appendix A: Definitions

1. **Extended Shelf Life (ESL)**: Extended shelf life products are treated in a manner to reduce the microbial count beyond normal pasteurization, packaged under hygienic conditions and which have an extended shelf life under refrigerated conditions.1
2. **Aseptic Processing and Packaging for Milk and Milk Products:** Aseptic processing and packaging means that the milk and/or milk product has been

subjected to sufficient heat processing and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Parts 108, 110, and 113 and to maintain the commercial sterility of the milk and/or milk product under normal non-refrigerated conditions.2

Footnotes:
1 Prasad, Subhash. (2023). Extended Shelf Life (ESL) Milk Processing.
2 U.S. Food and Drug Administration. (2026). 21 CFR §113.3 – Definitions. Aseptic processing and packaging definition.

Response to O-55-4

Comment rejected. This portion of the commenter's submission does not require a separate response because it only provides definitions for terms use in previous portions of the submission. It is not a separate recommendation or objection.

O-56: Melissa Fox

Comment O-56-1

CornNext Corporation ("CornNext") respectfully submits these comments in response to CalRecycle's request for public input regarding implementation of SB 54. These comments supplement and update CornNext's October 7, 2025 comments on the SB 54 draft regulations concerning definitions of "biodegradable" and "compostable" materials. CornNext is a manufacturer of packaging and food-service products derived directly from agricultural feedstocks, including corn starch and other agricultural byproducts. Our products preserve original agricultural biochemistry through physical transformation rather than polymerization or chemical synthesis, supporting true agricultural circularity and compatibility with compost-based soil systems.

CornNext supports SB 54's environmental objectives and offers the following comments to ensure that implementation aligns with material science realities, agricultural system integrity, and the statute's waste-reduction goals.

I. Continued Need for a Tiered Framework Distinguishing Natural and Bio-Synthetic Materials

As set forth in CornNext's prior comments, SB 54 implementation must distinguish between:

1. **Natural-source, non-polymeric materials** derived directly from agricultural crops or byproducts through physical processing that preserves original molecular structure; and
2. **Bio-synthetic materials** derived from biological feedstocks but requiring fermentation, chemical synthesis, or polymer creation.

The current Covered Material Category (CMC) framework and compostability eligibility determinations risk collapsing these materially different classes into a single category based primarily on ASTM compostability testing. This approach obscures significant differences in environmental behavior, infrastructure dependence, and compatibility with agricultural compost systems.

CornNext reiterates its recommendation that CalRecycle formally recognize a **tiered classification system** within SB 54 implementation that reflects these fundamental distinctions.

II. Compostability Determinations Should Reflect Molecular Breakdown, Not Fragmentation

CornNext remains concerned that existing compostability standards rely heavily on particle size thresholds rather than confirmation of molecular degradation. Materials that fragment below a 2mm sieve may still persist as synthetic residues in soil systems.

For this reason, CornNext urges CalRecycle to:

- Require **enhanced testing for bio-synthetic materials**, including microplastics residue assessment and polymer-specific molecular degradation verification; and
- Recognize that natural-source, non-polymeric materials that preserve agricultural biochemistry demonstrate broader environmental compatibility and more complete biodegradation across varied composting conditions.

These distinctions are particularly important for compost used in organic and sustainable agriculture, where synthetic residues undermine soil health and farmer confidence.

III. Alignment With Agricultural and Organic Composting Systems

SB 54 implementation should complement, not conflict with, existing agricultural and organic frameworks. Federal organic standards significantly restrict synthetic inputs in compost feedstocks, reflecting long-standing concerns from farmers and soil scientists.

CornNext urges CalRecycle to:

- Coordinate compostability determinations under SB 54 with organic agriculture principles; and
- Avoid regulatory approaches that treat synthetic bio-polymers as functionally equivalent to natural agricultural materials for composting purposes.

Failure to maintain this distinction risks compromising compost markets relied upon by organic and sustainable farmers.

IV. Eco-Modulated Fees Should Reward True Agricultural Circularity

Eco-modulated fees are a central lever for achieving SB 54's goals. CornNext encourages CalRecycle to ensure that fee structures:

- Recognize lower infrastructure dependency and broader composting compatibility of natural-source, non-polymeric materials; and
- Apply evidence-based eco-modulation to bio-synthetic materials reflecting processing complexity, testing burdens, and environmental persistence risks.

Proper fee differentiation will incentivize genuine source reduction and agricultural circularity rather than perpetuating reliance on synthetic substitutes.

V. Small Food-Service Items and System Limitations

CornNext also reiterates that small food-service items such as straws face system-level collection and sorting barriers unrelated to material performance. SB 54 implementation should not penalize products for infrastructure deficiencies that are beyond producer control.

Explicit treatment of small-format items, coupled with appropriate compliance pathways, is essential to avoid unintended consequences.

VI. Transition and Good-Faith Compliance

Finally, CornNext urges CalRecycle to maintain transition periods and good-faith compliance protections for producers developing or deploying materials consistent with SB 54's objectives. Regulatory certainty is critical to continued investment in safer, agriculture-based alternatives.

Conclusion

California has a unique opportunity to lead by distinguishing truly natural, agricultural-source materials from industrially synthesized bio-polymers within its EPR framework. By adopting a tiered approach, enhancing testing where warranted, and aligning SB 54 implementation with agricultural realities, CalRecycle can advance waste reduction while protecting soil systems and farmer trust.

CornNext appreciates the opportunity to comment and looks forward to continued engagement with CalRecycle.

Response to O-56-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-57: Glass Packaging Institute (Scott DeFife)

Comment O-57-1

material. The glass beneficiation plants, and equivalents, produce cullet, which has a positive environmental impact in the making of new glass containers. Cullet not only helps displace raw materials but also requires less energy to melt than the energy required to convert raw materials into glass, lowering energy use, emissions, and carbon footprint.

Article 11 - Local Jurisdiction Exemptions. GPI remains concerned that local jurisdictions and recycling service providers have an adequate bar for process and data supporting their request of exempting themselves from otherwise recyclable CMC's. While needing to alow for special, limited circumstances, that producers with material in the CMC that is the target of the exemption can be exempted from accepting materials. The impact of cumulative jurisdictions gaining exemption may impact CMCs being able to reach targets and are at risk of fees or material bans.
Sincerely,
Scott DeFife
President

Response to O-57-1

Comment rejected. This comment is in the form of a screenshot that appears to capture only the final half-page of a two-page letter. The letter was not submitted in any other form, so CalRecycle was only able to review the portion visible in the screenshot. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-58: Members of the California Legislature (Senator Ben Allen)

Comment O-58-1

On behalf of Senator Allen, author of SB 54, please see the attached letter signed by 21 members of the California Legislature. The letter is the most recent in a series of letters delineating the legislators' concerns related to the proposed regulations and the full implementation of SB 54. Please reach out to our office if any questions arise.

February 13, 2026

Ms. Karen Kayfetz
Branch Chief
CalRecycle Product Stewardship Branch
1001 I St
Sacramento, CA 95814

Also submitted electronically via packaging@calrecycle.ca.gov and
CalRecycle comment portal (calrecycle.commentinput.com/?id=3ikJbFpZN)

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations published on January 29, 2026

Dear Ms. Derksen and Director Heller:

While we welcome the opportunity to submit comments to the Department and Administration again, urging that the SB 54 regulations accurately reflect the letter of the law, we are disappointed to see that the changes proposed in this latest draft are minor and technical and fail to address the concerns we have consistently raised. We are all eager for the law's implementation. This additional delay, while entirely avoidable, provided a renewed opportunity to ensure the regulations comply with the law as signed. Therefore, we continue to encourage the Department and Administration to reconsider their proposal to allow broad, sweeping exemptions that would undermine the program and increase costs for ratepayers.

SB 54 was carefully and thoughtfully negotiated and drafted to provide producers with a clear path to ensure that all covered packaging complies. Certain materials were granted program exemptions, and each exemption was carefully considered. Hearing from producers that other materials may also face significant hurdles in achieving the recycling rates proposed and agreed to by all participating stakeholders, the program included a provision allowing the Department to provide producers who could demonstrate such claims an extended on-ramp into the program. This provision was deliberately designed to ensure such producers remained in the program, continued to contribute to the infrastructure to relieve ratepayers, and avoided shifting the cost to other producers. This was intentionally written in order to keep producers obliged to continue working for and investing in solutions that would overcome any obstacles to compliance.

At its core, SB 54 has sought to address the plastic pollution crisis while simultaneously tackling the growing affordability issues which have resulted from the increased cost local governments have witnessed as more and more producers turned to unsustainable packaging and food ware materials. Those raising costs have been passed on to local residents who are already struggling to afford day-to-day expenses. SB 54 shifts this burden, finally requiring producers to take responsibility for their packaging choices. Producers make packaging decisions, including when to use

recycled content, when to reduce unnecessary material, and when to shift from plastic to a more sustainable alternative. Therefore, only the producer can relieve the financial burden resulting from the flood of plastic waste now engulfing the marketplace.

If the draft regulations are not changed to remove the overly broad and unlawful allowance for sweeping exemptions, SB 54's ability to deliver cost savings to consumers will not be fully realized.

Thank you for considering our comments. If you have questions, please contact my Chief of Staff, Tina Andolina, at (916) 651-4024.

Sincerely,

BEN ALLEN
Senator, 24th District
Author, SB 54

CATHERINE BLAKESPEAR
Senator, 38th District
Chair, Senate Committee on Environmental Quality

JESSE ARREGUÍN
Senator, 7th District

JOSH BECKER
Senator, 13th District

JOHN LAIRD
Senator, 17th District

SASHA RENÉE PÉREZ
Senator, 25th District

HENRY STERN
Senator, 27th District

SCOTT WIENER
Senator, 11th District

DAWN ADDIS
Assemblymember, 30th District

STEVE BENNETT
Assemblymember, 38th District

TASHA BOERNER

Assemblymember, 77th District

ISAAC BRYAN
Assemblymember, 55th District

DAMON CONNOLLY
Assemblymember, 12th District

ROBERT GARCIA
Assemblymember, 50th District

GREGG HART
Assemblymember, 37th District

ASH KALRA
Assemblymember, 30th District

ALEX LEE
Assemblymember, 24th District

AL MURATSUCHI
Assemblymember, 66th District

GAIL PELLERIN
Assemblymember, 28th District

NICK SCHULTZ
Assemblymember, 44th District

CATHERINE STEFANI
Assemblymember, 28th District

cc:

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Nani Coloretti
Cabinet Secretary
Office of the California Governor Gavin Newsom
Nani.Coloretti@gov.ca.gov

Yana Garcia
Secretary for Environmental Protection

California Environmental Protection Agency
1001 I Street, Sacramento, CA 95814
Yana.Garcia@calepa.ca.gov

Zoe Heller
Director
Department of Resources Recycling and Recovery
1001 I Street, Sacramento, CA 95814
Zoe.Heller@calrecycle.ca.gov

[Attachments to this submission included separately in the rulemaking file]

Response to O-58-1

Comment rejected. CalRecycle understands this comment's reference to the statutory provision "allowing the Department to provide producers who could demonstrate such claims [regarding 'hurdles' in achieving mandated recycling rates] an extended on-ramp into the program" to concern CalRecycle's authority under Public Resources Code section 42061(a)(3)(B) to consider covered materials "recyclable" based on determinations that materials are "trending" toward compliance. No response is necessary to that assertion because it does not concern Public Resources Code section 42060(b) or the provisions in the 45-Day Changes that have been revised. Even if that statutory authority were relevant to those revisions, CalRecycle would reject it because it rests on a misreading of the statute. Contrary to the commenters' assertion, achieving recycling rates is irrelevant to section 42061(a)(3)(B), under which covered materials would be deemed "recyclable," with no effect on whether items are "covered material" or are required to achieve certain recycling rates. Relatedly, the commenter's assertion that the "trending" provision would "ensure such producers remained in the program," that assertion is unfounded because absence of a "trending" determination would have no effect on whether entities are "producers" or are otherwise exempt from the Act's requirements.
Regarding the commenters' recommendation "to remove the overly broad and unlawful allowance for sweeping exemptions," no response is required unless the recommendation concerns section 18980.2(a)(2), which the comment does not mention. To the extent the commenters intended to comment on section 18980.2(a)(2), CalRecycle rejects it for the reasons stated in responses to comments I-19-1, I-59-2, and O-93-9 (each submitted in response to 45-Day Changes), regarding the effects of the revisions to section 18980.2(a)(2) and the reasons for not removing it. To the extent the commenter intended to suggest that section 18980.2.4 (implementing exemptions for "unique challenges" and exemptions for health and safety reasons) is sufficient to accommodate conflicts with federal requirements, CalRecycle rejects that suggestion for the reasons provided in response to comment O-40-1.
Regarding the attachments that the commenters included with their submission

(and which are included in the rulemaking record), those attachments are comments submitted regarding the 45-Day Changes and comments submitted regarding draft regulations that are not part of this rulemaking, so no separate responses are necessary. Separate responses are also unnecessary to the extent those comments concern any provisions of the 15-Day Changes that are unchanged compared to corresponding provisions of the 45-Day Changes. To the extent those comments could be construed as part of this comment and requiring responses because they are relevant to the changes to the 45-Day Changes, the current response applies to them as well.

O-59: The Recycling Partnership (Dylan de Thomas)

Comment O-59-1

February 13, 2026

California Department of Resources Recycling and Recovery (CalRecycle)
Submitted by Email Via: packaging@calrecycle.ca.gov

Dear SB 54 Regulation Implementation Team:

We are submitting for your consideration the attached comments related to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations draft regulations published January 29, 2026 under the 15-day comment period.

Thank you for your team's hard work and for the opportunity to participate.

The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. We strive to represent the interests of the emerging circular economy system as a whole through our SB 54 engagement.

Sincerely,
Dylan de Thomas
VP of Public Policy & Government Affairs
The Recycling Partnership

Attachments:
1. The Recycling Partnership - Comments Related to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act draft Regulations Published January 29, 2026

Attachment 1: The Recycling Partnership
Comments on Draft SB 54 Regulations Published January 29, 2026

Thank you once again to CalRecycle for your continuing efforts to craft workable SB 54 regulations that balance diverse interest holder concerns.

The Recycling Partnership represents the recycling system, and our rulemaking comments are grounded in this perspective.

The Recycling Partnership's mission is to build a better recycling system – one that delivers the economic and environmental benefits our communities and the hundreds of thousands of people who work throughout the recycling industry deserve.

With a major focus on advancing EPR and related policies, The Recycling Partnership helped lead negotiations leading to enactment of SB 54 in 2022, and we have been actively engaged ever since. We are dedicated to maximizing the expansive circular economy benefits of this novel statute and establishing it as a successful model to help drive continued progress in extended producer responsibility (EPR) nationwide.

We have grouped our comments into two priorities.

> **Response to O-59-1**
> Comment rejected. No response to this portion of the commenter's submission is necessary because it is an introduction to later, more detailed portions of the submission and does not add suggestions or objections to those expressed in those portions, to which CalRecycle has responded separately.

Comment O-59-2

Priority 1: To retain the potential feasibility of on-time PRO plan approval and EPR program launch, we continue to support CalRecycle's efforts to adopt final regulations at the earliest possible moment.

As reflected in our October 7, 2025, rulemaking submission, we understand that CalRecycle must avoid substantive changes that could trigger yet another 15-day public comment period and associated process steps. At this juncture, four months from the current final deadline for draft plan submittal on June 15, 2026, the critical needs assessment study has still not been published and there is no clear date by which rulemaking can confidently be expected to be complete. These delays, on top of the already wholly unprecedented nature of SB 54 and the tight statutory timetable, are straining development of the new EPR system and could jeopardize the full promise of SB 54.
In this context, adopting regulations as soon as possible is imperative and must be the top priority, notwithstanding our continuing concerns about the federal exclusion provision described below.

There is also an urgent need for CalRecycle to publish additional, plain-language guidance documents, engage in informal discussions to clarify intent, and to consider additional rulemaking as implementation proceeds.

Response to O-59-2

Comment rejected. No response to this comment is necessary because it does not suggest a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-59-3

Priority 2: Recommendations Focused on Current Revisions

Table 1 at the bottom of this submission details the Partnership's comments and recommendations that are focused on the revisions shown as mark-ups in the January 29, 2026, draft SB 54 regulations. We generally support these revisions, which we view as modest improvements over the prior language since our key concerns described below are not addressed. Table 1 includes two recommendations that we believe are not controversial and would be within the scope of changes CalRecycle may make without triggering additional comment periods or process delays.

Response to O-59-3

Comment rejected. No response to this comment is necessary because it only refers to recommendations found in other portions of the commenter's submission. It does not contain any substantive recommendations or objections.

Comment O-59-4

Priority 3: Strong Concerns Over the Exclusion for Federal Conflicts

Due to the imperative to expedite rulemaking we are advocating for minimal additional changes to the current draft regulations. But as detailed in our October 7, 2025, submission, we continue to have significant concerns over certain aspects of the current draft regulations. We believe that, as currently written, the categorical exclusion for federal regulation conflicts in Section 18980.2(a)(2) could be highly disruptive to SB 54. While we hope otherwise, it is plausible that a great many submissions may be received over time, and due to resource constraints and competing priorities, it could be many months or even years before CalRecycle is able to systematically review, research and follow the prescribed process to deny asserted exclusions not satisfying the regulatory standards. And even then, it will be an additional 180 days before the referenced packaging would revert to being considered covered materials. In the meantime, there will be confusion, delays and increased costs as the PRO works to confirm who is an obligated producer, to determine the scope of covered materials subject to fees, and to revise and reassess related reporting, system improvement strategies, and fees.

Again, if not for the overriding need to expedite rulemaking, we would be advocating strongly for the more fundamental changes to this provision outlined in our October 7, 2025, submission. We reiterate them here for the record with some additions, and if CalRecycle does choose to make more fundamental changes to the current draft, we urge you to consider these adjustments:

• Ideally 18980.2(a)(2) should be deleted, with any federal conflicts to be addressed through the existing exemption processes outlined in 18980.2.4, a far more appropriate approach than the one currently proposed. The remaining bullets recommend changes to the current provision, assuming it is not deleted.
• Only SB 54 producers should be allowed to submit exclusions, not all "entities" as is stated in draft regulations. However, regulations should encourage joint applications covering classes of packaging or products, for efficiency.
• Upon receipt of a notification by CalRecycle, the default should be that referenced packaging or packaging components shall be deemed covered materials unless and until the Department proactively determines otherwise.
• CalRecycle should be required (or at least authorized) to make a rapid review and ruling on submissions (beyond a check for completeness) that could include immediate rejection of the claimed exclusion, which would help bolster the efficiency of the process.
• If granted, exclusions should be time limited, lasting perhaps only 2-3 years and then requiring resubmittal. Recycling systems may be improved to the point that the excluded packaging can satisfy both SB 54 and federal requirements.
• There should be an annual deadline (perhaps March 31) for submissions to take effect in the following plan implementation calendar year. For the initial year, the deadline should be within 30 days of regulations being adopted.
• CalRecycle should seek to identify a more objectively measurable standard beyond "not reasonably possible to use other packaging." We appreciate the modest refinement in the revised regulations to clarify this standard, but it still does not provide an objective, measurable basis for a determination of what satisfies it.

Response to O-59-4

Comment rejected. Regarding the procedural concerns over the time that may elapse before faulty exclusion claims are removed from the database required under section 18980.2(a)(2)(D), CalRecycle declines to modify that procedure for the reasons stated in response to comment O-25-2.

Regarding the suggestions that CalRecycle delete section 18980.2(a)(2), that "[o]nly SB 54 producers should be allowed to submit exclusions," and that there should be an annual deadline, CalRecycle rejects this comment for the same reasons it rejected the commenter's previous comment making the same suggestions (comment O-104-4, submitted in response to the 45-Day Changes). Those reasons apply equally to this comment, which does not provide any new justification for the requested change.

Regarding encouragement of "joint applications covering classes of packaging or products," no change is warranted because section 18980.2(a)(2), as written, allows such submissions. There is no requirement that notices concern only a single packaging item or packaging for a single product, nor is there a requirement that the notice only encompasses packaging or products with which the submitter is directly associated.

Regarding the suggestion that the regulation require "rapid review and ruling on submissions (beyond a check for completeness)," no change is warranted

because the regulation, as written, already includes a mechanism for immediate rejection. CalRecycle's initial review of notices, as described in section 18980.2(a)(2)(C), does not disregard the substance of a notice. Instead, it provides reasonable safeguards against faulty notices because notices will be rejected if they fail to cite a conflict with federal requirements or if CalRecycle is aware of packaging that would avoid cited conflicts. Delaying the effect of a notice until CalRecycle could issue a more particularized "ruling" on it would be impracticable and fail to protect entities regulated under federal law from harms that Public Resources Code section 42060(b) was intended to avoid. See, also, CalRecycle's response to comment O-25-2, regarding the reasonableness of the procedure established in 18980.2(a)(2).

Regarding the suggestion that exclusions should be time-limited, CalRecycle rejects this comment for the reasons provided in response to comment O-25-2. See, also, comment O-104-4 (submitted by this commenter in response to the 45-Day Changes) and comment I-59-2 (also submitted in response to the 45-Day Changes).

Regarding the suggestion to "identify a more objectively measurable standard," CalRecycle declines to revise the proposed regulation because the commenter fails suggest one for CalRecycle to consider, and neither CalRecycle nor any other commenter has identified a standard more workable than "not reasonably possible," as refined in the 15-Day Changes.

Comment O-59-5

Comments and Recommendations on the January 29, 2026, Revisions to Draft SB 54 Regulations

Regulation Section and Topic

18980.2(a)(2) - Support for modest improvements

Comments and Recommendations

We support the following revisions that result in modest improvements to this provision:

• In paragraph (2): Adding reference to the Act in addition to federal requirements and adding the word “mandatory” to describe the federal requirements covered by this provision. This helps to ensure that only mandatory federal requirements are cited as conflicts, not voluntary elements of guidelines, for example.
• In subparagraph (A): Explicitly stating the provision addresses packaging “and packaging components.” This may help to narrow the scope and focus of submitted notices.
• In subparagraph (C): Explicitly adding a requirement for CalRecycle to determine whether a submission is complete or does not address known packaging or packaging components that would avoid the cited conflict, and to require a resubmittal that corrects these deficiencies.

Response to O-59-5

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-59-6

Regulation Section and Topic

18980.2(a)(2)(B) - Greater specificity is needed in standards for "not reasonably possible"

Comments and Recommendations

We appreciate the clarifying standards for determining whether "it is not reasonably possible to use any such alternative" packaging. However, we recommend that CalRecycle use the same language in clauses (i) through (iii) as is used in paragraph (2) to describe the specific laws referenced, as shown in the edits below. Otherwise, "all legal conflicts" could be interpreted broadly to include any legal conflict not specifically pertinent to conflicts between the Act and specific mandatory federal requirements.

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

(i) There is no such alternative that satisfies all applicable mandatory standards for safety and structural integrity of packaging, creates no new unavoidable legal conflict with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration ~~law~~, and otherwise is lawful to use in California.

(ii) It is not possible to avoid all new legal conflicts with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration by eliminating or replacing the components that cause the conflict cited in the notice and which are otherwise lawful to use in California; and

(iii) It is not possible to avoid all new legal conflicts with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration by redesigning or replacing the packaging as a whole in a way that is lawful to use in California.

Response to O-59-6

Comment rejected. The commenter's suggestion that the criteria should only refer to requirements promulgated by the agencies mentioned in 18980.2(a)(2) is flawed because Public Resources Code section 42060(b)(2) expressly concerns whether a requirement is "in direct conflict with a federal law or regulation." While it also lists regulations issued by specific agencies, that list is expressly non-limiting. CalRecycle also rejects this comment because referring to avoidance of "all legal conflicts" is necessary to avoid the scenario in which packaging would be considered an "alternative" despite being illegal under some other law, in effect replacing one intractable conflict with another. It would be nonsensical to consider that outcome a resolution of the conflict with federal requirements.

Comment O-59-7

Regulation Section and Topic

18980.2(a)(2)(E) - More explicit authorization for CalRecycle reconsideration of exclusions is needed

Comments and Recommendations

The regulations should make it explicitly clear that the Department may make multiple requests for information for any reason it deems necessary and may reconsider a prior determination, specifically if new packaging or packaging components may have become available that could eliminate the conflict. Edits similar to the following could do this:

(E)~~(B)~~ At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days. Such a request may be made multiple times and for any reason the Department deems necessary, including but not limited to evaluating whether new packaging or packaging components may have become available that could eliminate any conflict as described in paragraph (2). If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity…, which shall respond within 60 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Departmentshall determine whether the notice and additional information have demonstrated that each~~the~~ packaging or packaging component qualifies for the exclusion. If the Department determines that the notice and additional information fail to demonstrate that certain packaging or packaging components identified in the notice ~~does not~~ qualify for the exclusion, the Department shall notify the entity via email and update the database accordingly. Those packaging or packaging components shall then ~~it shall~~ be considered covered material 180 days following such notification~~the Department's decision~~.

Response to O-59-7

Comment rejected. CalRecycle rejects this comment because the suggested change would have no substantive effect. Section 18980.2(a)(2)(E) already clearly establishes that CalRecycle may issue multiple requests, with no specific limitation as to its reasons for doing so.

Comment O-59-8

Public Comment Period for CalRecycle Trending Toward Recyclable Preliminary Designations

Regulation Section and Topic

18980.3.1(c) – Need for a longer public comment period (at least 60 days) to allow Advisory Board review

Comments and Recommendations

The revisions to this subsection establish a new 30-day limit for public submission of information related to a CalRecycle preliminary designation of trending towards recyclable. We think this is too short a period for interested parties to compile and submit data that could prove important for the Department to consider. Review and feedback from the Producer Responsibility Advisory Board seems critical to the review and would provide an opportunity for the public to make verbal comments and engage in a public discussion of the merits of any preliminary designations.

To provide a reasonable time period and to help ensure the Advisory Board can adjust its schedule, including adhering to mandatory public meeting noticing requirements, we recommend the public comment period be extended to 60 days.

Response to O-59-8

Comment rejected. Paragraphs (1) through (4) of section 18980.3.1(c) carefully circumscribe the topics that comments may address, and interested parties do not reasonably require more than 30 days to prepare comments that they strictly limit to those topics. Furthermore, the commenter has not given any specific examples to demonstrate why 30 days is insufficient or why 60 days would be sufficient.

Comment O-59-9

Revised Timeline and Submittal Process to Accommodate Uncertain Rulemaking Adoption Date

Regulation Section and Topic

18980.2(a)(2)(A) and numerous other locations - Revisions allowing electronic submittals via email if the department has not established an online portal

Comments and Recommendations

The revised regulations include slightly different language in numerous places, first appearing in subparagraph 18980.2(a)(2)(A), that allow submission of specified documents via email if the Department has not yet established an online portal, and require use of the online portal if one has been established. **We support these revisions that are necessary to meet the statutory SB 54 deadlines for PRO Plan approval and implementation.**

Response to O-59-9

Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

Comment O-59-10

Revised Timeline and Submittal Process to Accommodate Uncertain Rulemaking Adoption Date

Regulation Section and Topic

18980.6.1(a) and 18980.6.1(b) - Revisions to the deadline for submission of the producer responsibility plan

Comments and Recommendations

Comment 1: These revisions require the Office of Administrative Law to insert the date of filing with the Secretary of State or April 1, 2026, whichever is later, as the date by which the PRO must submit the Producer Responsibility Plan to the Advisory Board. **We support these revisions that are needed to help ensure implementation advances without delay regardless of when the regulations are adopted, while still allowing the PRO to submit the draft plan by June 15 (date certain) subject to a reduced review period.**

Comment 2: We are concerned that rulemaking could potentially be unexpectedly delayed past June 15. CalRecycle should consider revising these sections to call on the Office of Administrative law to establish a final plan submittal date that is 75 days after the date that the regulations are filed with the Secretary of State, if that date is later than April 1, 2026, consistent with the current revisions.

Response to O-59-10

Comment rejected. No change is warranted because CalRecycle reasonably anticipates the regulations being filed before June 15, 2026.

Comment O-59-11

Revised Timeline and Submittal Process to Accommodate Uncertain Rulemaking Adoption Date

Regulation Section and Topic

18980.6.1(d), 18980.6.3(b), 18980.7(b) and 18980.7.2(b) – Public comment requirement when PRO / Independent Producer Plan or Plan Update is submitted to Advisory Board

Comments and Recommendations

These sections were revised to require the PRO and an Independent Producer to post its draft Producer Responsibility Plan or Plan Update for public comment when it sends the plan to the Advisory Board, and to consider all public and Advisory Board comments received within 60 days. **We support these revisions that are necessary to meet the statutory SB 54 deadlines for PRO Plan approval and implementation and that are reasonable for future submittals.**

> **Response to O-59-11**
>
> Comment rejected. No substantive response is necessary because the comment does not recommend a change to the proposed regulations or raise an objection related to the rulemaking process.

O-60: Anonymous

Comment O-60-1

February 13, 2026

California Department of Resources and Recycling
SB 54 Regulation Implementation Team
Packaging EPR Section Regulations Unit
Legal Affairs Office

Submitted by Public Comment Form and by email to: packaging@calrecycle.ca.gov

Subject: Public Comments on SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear CalRecycle,
The National Stewardship Action Council (NSAC) is a 501(c)(4) non-profit organization comprised of governments, non-government organizations, businesses, and consumers with the vision for the United States to attain a responsible, circular economy, an economic system that designs out waste and pollution, keeps materials in use, and

regenerates natural systems. We were active participants in the SB 54 bill negotiations and want to ensure the program works as planned.

To ensure the success of SB 54, in January 2023, we convened a working group with more than 200 representatives from local governments, producers, recyclers, NGOs, packaging designers and packaging safety consultants, and consumers. This group has met monthly to review the statute and regulations, share perspectives, and facilitate in-depth discussions on critical sections such as local government roles, responsible end markets, covered materials, and reuse infrastructure. By fostering dialogue across sectors, we have created a platform that allows representatives to learn from one another and submit more thoughtful, robust individual comments. We believe CalRecycle benefits from the depth of input generated through this collaboration.

Response to O-60-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-60-2

This letter is in response to the latest draft of permanent regulations released on January 29, 2026. We strongly believe that **SB 54 intended to reduce the overall system costs and was negotiated with industry to ensure it would be applied fairly to producers**. To that end, while we recognize and appreciate the significant work CalRecycle has put into refining these rules and address our concerns outlined in our prior comments regarding Covered Materials and Categorically Excluded Materials, we maintain the regulations, as currently drafted, in several places, still have overreached statutory authority and delay progress, flatly do not follow the law as written, lack clarity, and risk undermining the carefully negotiated balance of SB 54. Therefore, we will continue to repeat the comments we have given prior to sections that were not
changed in this version and have attached our comments submitted October 7, 2025

Response to O-60-2

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-60-3

Regarding the changes to Article 2, we thank CalRecycle for improving the regulations on Covered Material and Covered Material Categories (see our last comments attached as a reference) by attempting to plug the loopholes that would have allowed categorical exceptions that would have been unfair to some producers of food packaging. We appreciate those efforts and are also grateful for the increase in transparency of the process by having a public database on applications and approvals or denials so it's clear what packaging is covered or receives approval to be categorically and exception and therefore would not have to comply with SB54.

However, we still believe there are opportunities to further improve the language and hope you will consider these comments in a future draft:

Overarching Concerns in Article 2 Changes:

1. Section 18980.2 (a) 2 discusses “mandatory regulations” which we always thought were mandatory so that is confusing language, and then “mandatory guidelines” when guidelines are not law or regulations which is also confusing. We do not know what the intent of this section is, so if this language stays, we recommend adding examples of what is meant by these terms.
2. In Section 18980.2 (b), we recommend deleting the language that allows the categorical exclusion for secondary and tertiary packaging, which conflicts with the statute.
3. We do not believe that CalRecycle currently has on staff or in contract experts in food safety law nor packaging expertise to make the decisions on whether food packaging has a safe alternative. Food safety law is mostly federal and puts the responsibility on the producer to ensure food is safe. CalRecycle may not have the expertise to know when a package is safe and may not have the legal authority to order changes to packaging that may put companies at risk of being non-compliant with food safety rules. We encourage CalRecycle to contract with the legal and food safety experts needed before they receive any categorical exception applications.

Response to O-60-3

Comment rejected. Regarding "mandatory regulations," that phrase is clear on its face and was added in the 15-Day Changes to prevent section 18980.2(a)(2) from being interpreted as authorizing exclusion of packaging from the Act based on "guidelines" that do set forth voluntary standards, not requirements. See CalRecycle's response to comment B-3-1 for further explanation of the effect of that phrase. Regarding section 18980.2(b), no response is necessary because that provision has not been modified in the 15-Day Changes. Regarding the commenter's statements regarding CalRecycle's expertise, no response is required because those statements do not concern the proposed regulations themselves.

Comment O-60-4

For SB 54 to succeed for Californians, the regulations must reflect the law’s intent: protecting the environment while unlocking billions in economic benefit. If not implemented as negotiated and passed, the regulations undermine the democratic process that created the bill, leave billions in environmental and economic benefits on the table, risk unfair markets that invite litigation, and jeopardize California's leadership, putting packaging EPR programs at risk
nationwide.

Thank you again for the opportunity to comment and we appreciate all the hard work you do and for your consideration of our comments.

Respectfully,
Heidi Sanborn
National Stewardship Action Council

Attached: NSAC letter dated Oct 7, 2025, that includes comments that still apply for other sections of the regulations that were not changed in the January 29, 2026 draft.

Response to O-60-4

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-61: National Stewardship Action Council (Heidi Sanborn)

Comment O-61-1

Please see our letter attached.

October 7, 2025

California Department of Resources and Recycling
SB 54 Regulation Implementation Team
Packaging EPR Section Regulations Unit
Legal Affairs Office

Submitted by Public Comment Form and by email to: packaging@calrecycle.ca.gov

Subject: Public Comments on SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear CalRecycle,

The National Stewardship Action Council (NSAC) is a 501(c)(4) non-profit organization comprised of governments, non-government organizations, businesses, and consumers with the vision for the United States to attain a responsible, circular economy, an economic system that designs out waste and pollution, keeps materials in use, and regenerates natural systems. We were active participants in the SB 54 bill negotiations and want to ensure the program works as planned.

This letter is in response to the permanent regulations released on August 22, 2025. We strongly believe that **SB 54 intended to reduce the overall costs of the system and was negotiated with industry to ensure it would work for business as well**. While we recognize and appreciate the significant work CalRecycle has put into refining these

rules, we remain deeply concerned that the regulations, as currently drafted, in several places, overreach statutory authority and delay progress, flatly do not follow the law as written, lack clarity, and risk undermining the carefully negotiated balance of SB 54.

To ensure the success of SB 54, in January 2023, we convened a working group with more than 200 representatives from local governments, producers, recyclers, NGOs, packaging designers, consultants, and consumers. This group has met monthly to review the statute and regulations, share perspectives, and facilitate in-depth discussions on critical sections such as local government roles, responsible end markets, covered materials, and reuse infrastructure. By fostering dialogue across sectors, we have created a platform that allows representatives to learn from one another and submit more thoughtful, robust comments. We believe CalRecycle benefits from the depth of input generated through this collaboration.

If these regulations cannot be implemented as intended, industry supported SB 54 in lieu of the competing ballot measure may argue that they cannot meet the goals they themselves supported. That would have national consequences, since California's implementation is being closely watched by policymakers across the U.S.

We strongly urge CalRecycle and the Governor's office to align the regulations with SB 54's legislative intent to create a fair, effective, and transparent producer responsibility program that supports affordability for consumers, prevents loopholes, and builds consumer trust.

<u>Overarching Concerns:</u>
1. Several provisions go beyond statutory authority, particularly enforcement against local governments, chemical "recycling", delaying eco-modulation, not including Over the Counter pharmaceuticals to be "covered products", not addressing the future application by other Producer Run Organizations (PRO), and the exclusion application process that was added to this draft.
2. Producers, local governments, and other impacted entities still lack a clear understanding of their obligations and how the money will flow, which jeopardizes program success.
3. Certain deadlines, especially for reuse and refill, are unrealistic given the lack of early staffing and preparation by the Producer Responsibility Organization (PRO).

<u>Specific Recommendations:</u>
1. Article 2: Covered Material and Covered Material Categories
Section 18980.2 Categorically Excluded Materials
We are concerned that the categorical exclusion framework in Section 18980.2 is overly broad and could exempt large portions of food packaging including primary, secondary, and tertiary components, simply because they serve a food safety function under FDA or FSMA standards. As Mark Dargay, Director of Regulatory Compliance at Comprehensive Food Safety, noted in his expert comments, the current language could allow barrier films, glass jars, metal lids, tamper-evident seals, kraft board boxes, and corrugated shipping cases to all qualify for exclusion, significantly limiting the scope of

SB 54. To avoid this, CalRecycle should strengthen safeguards by ensuring packaging expertise is available on staff, requiring written justification and federal concurrence for exemption claims, and setting clear timelines and limits for approvals. Without these checks, exemptions could remain valid upon submission and persist indefinitely, creating loopholes, litigation risks, and unfair cost burdens on some producers. Exclusions should be limited to safety-driven packaging that is demonstrably necessary for microbial control, structural integrity, or tamper-resistance, while keeping marketing, display, and convenience-driven packaging within the program.

Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware (a)(4)(A) "Unless the item was delivered directly to a consumer, there is at least one location for returning the item that is either: the same location where the item was obtained or delivered; or within one mile of the location where the original item was obtained and has hours of operation that encompass, at a minimum, the hours of operation of the location where the item was obtained."

We are concerned that the current language may unintentionally exclude curbside collection of reusable packaging from qualifying as a "convenient" return option. At least three municipalities in California are actively piloting curbside collection programs for reusable packaging, which provides a highly accessible return modality for consumers. To ensure these programs are recognized under SB 54's convenience standards, we recommend clarifying that participation in such curbside collection programs satisfies the return requirements.

We suggest the following language be added: "*(C) In either case, if a curbside collection program is made available by a municipality, private hauler, or other collection provider working with or on behalf of the PRO or an Independent Producer, the requirements of this paragraph are satisfied.*" This clarification would explicitly allow municipalities to opt into reuse system participation while supporting the statute's intent to maximize consumer convenience.

Section 18980.2.2. Exclusion of Certain Types of Packaging "The good must be one that is not ingested, irreversibly used, destroyed, or expended through its ordinary use." This language is confusing, particularly in the context of food packaging, since food is inherently consumed (i.e., expended). Without clarification, the regulation risks unintentionally excluding legitimate and necessary food packaging applications. We recommend rewriting this section to accurately reflect the functional realities of food product lifecycles while maintaining the intent of minimizing unnecessary packaging.

Section 18980.2.4 – Exemptions for Certain Covered Materials
The current regulations assign sole responsibility for submitting exclusion applications to the PRO. We are concerned this structure is both impractical and inconsistent with the intent of SB 54. A PRO is not structurally equipped to manage what could be thousands of exemption requests across diverse packaging materials, formats, and industry sectors. Placing the PRO as the sole "gatekeeper" creates an administrative bottleneck and forces it into the untenable role of arbitrator between producers, rather

than a coordinator of system obligations. Evaluating exclusions, especially across the wide range of food and non-food packaging subject to FDA/FSMA regulation, requires specialized technical expertise that PROs do not inherently possess. We recommend allowing an organization, such as an association, to be solely responsible for reviewing applications. This approach would simplify the submission process and reduce the administrative burden and costs to the PRO. It would also ensure that industry perspectives are represented in the review process and prevent undue concentration of authority in a single entity.

2. Article 3: Evaluations of Covered Material and Covered Material Categories
Section 18980.3.3 - Eligibility for Being Labeled "Compostable"
Consumer education is critical to the success of SB 54. The current draft regulations risk creating significant confusion by failing to clearly distinguish between compostable and recyclable packaging. Overly complex or contradictory rules will undermine consumer confidence and lead to "opt-out behavior," where individuals disengage rather than attempt to comply. The current language on items "associated with the recovery of desirable organic waste" is overly broad. As written, it appears to allow any product marketed, labeled, or sold for disposal in green bins, regardless of whether it is recoverable. We strongly recommend that CalRecycle adopt clear, consistent statewide messaging and education requirements to ensure consumers understand how to properly manage covered materials.

We are concerned that the current draft regulations create ambiguity regarding which materials qualify as "compostable" and how they are associated with the recovery of desirable organic waste. Notably, CalRecycle removed the definition of "desirable organic waste" that appeared in the October 2024 15-day draft regulations. This definition, previously used in AB 1201 and supported by the Biodegradable Products Institute, clarified that desirable organic waste includes food and green material accepted by composters. Its removal reduces clarity and may lead to inconsistent interpretation. We are concerned that the current draft regulations create ambiguity regarding which materials qualify as "compostable" and how they are associated with the recovery of desirable organic waste. Notably, CalRecycle removed the definition of "desirable organic waste" that appeared in the October 2024 15-day draft regulations. This definition, previously used in AB 1201 and supported by the Biodegradable Products Institute, clarified that desirable organic waste includes food and green material accepted by composters. Its removal reduces clarity and may lead to inconsistent interpretation.

3. Article 4: Responsible End Markets
Section 18980.4 - Responsible End Market Criteria
We are concerned that the current regulations could allow the production of recycled plastic flakes to count as recycling, even if the material is stockpiled without being manufactured into new products. This approach risks creating "mountains of plastic" that are technically counted as recycled but do not actually displace virgin plastic in the market. The recent closure of rPlanet Earth in Vernon illustrates the fragility and volatility of California's plastics recycling infrastructure.

To ensure that recycling metrics reflect meaningful environmental outcomes, we recommend that the regulations require incorporation of recycled feedstock into new manufactured products, rather than counting intermediate materials production such as flake or pellet. This would strengthen the integrity of SB 54's end-market requirements and promote real progress toward a circular economy.

4. Article 8: Producer Responsibility Plan Requirements
Section 18980.8 Producer Responsibility Plan
We are concerned that the draft regulations do not adequately protect local jurisdictions from undue costs associated with SB 54 implementation.

Under subdivision (g), "*Pursuant to paragraph (1) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a process for determining and paying costs that will be incurred, or otherwise would be incurred, by local jurisdictions, recycling service providers, alternative collection programs, and others due to requirements of the Act. For purposes of this subdivision, costs that the PRO and Independent Producers are obligated to pay are referred to as "covered costs." The process for determining covered costs must satisfy the following criteria*", the current language indicates that jurisdictions are only notified after a determination has been made. We recommend revising this provision so that jurisdictions are notified immediately upon submission of a cost claim, not solely after the PRO issues its determination. This change would ensure transparency and allow jurisdictions sufficient time to review and prepare responses.

Subdivision (h)(4)(E) *"Unless the parties agree otherwise, arbitration and mediation fees shall be apportioned equally among the parties. Each party shall be responsible for their own attorney's fees.*" specifies that arbitration and mediation fees shall be apportioned equally among the parties, with each party bearing its own attorney's fees. This approach conflicts with SB 54's statutory intent. Per PRC §42040(b)(2)(B), the Legislature intended that local jurisdictions be made financially whole for any new costs incurred under the Act. If arbitration results in a local jurisdiction prevailing, the PRO should be required to reimburse all arbitration, mediation, and legal costs. Without this protection, arbitration would be prohibitively costly for many jurisdictions, effectively denying them a fair process. San José, LA Sanitation, and other municipalities have raised this concern repeatedly during the regulatory process, yet no changes have been made to the regulations to address this fundamental concern.

5. Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions
Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers
The one-year update cycle for Covered Material Category (CMC) lists is impractical. Annual updates would require jurisdictions to revise bin labels, outreach materials, and public education campaigns on an unrealistic timeline. Language on enforcement raises additional risks, as jurisdictions could be fined if materials are not updated quickly enough, repeating challenges seen under SB 1383.

Jurisdictions also face a compliance gap prior to 2027. CMC lists are already published, but jurisdictions lack dedicated funding until the PRO plans are approved. Expecting compliance before plans are in place creates an unfunded mandate. CalRecycle's clarification that municipalities may pause violations while exemption or extension requests are under review is helpful, but further protections and guidance are needed to ensure local jurisdictions are not penalized for delays outside of their control.

For SB 54 to succeed for Californians, the regulations must reflect the law's intent: protecting the environment while unlocking billions in economic benefit. If not implemented as negotiated and passed, the regulations undermine the democratic process that created the bill, leave billions in environmental and economic benefits on the table, risk unfair markets that invite litigation, and jeopardize California's leadership, putting packaging EPR programs at risk nationwide.

Thank you again for the opportunity to comment and we appreciate all the hard work you do and for your consideration of our comments.

Respectfully,
National Stewardship Action Council

Response to O-61-1

Comment rejected. This comment is a copy of the commenter's October 7, 2025, submission concerning the 45-Day Changes. Because it does not concern the revisions to that version of the proposed regulations, no response is required. To the extent the section labeled "Section 18980.2 Categorically Excluded Materials" relates to revisions made to section 18980.2(a)(2), CalRecycle declines to make further revisions in response to it for the reasons stated in response to comment O-63-3 (from the commenter's original submission in response to the 45-Day Changes).

O-62: EPR Leadership Forum (Alchemy Graham)

Comment O-62-1

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

Submitted electronically via CalRecycle's Public Comment Portal

February 13, 2026

RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear Csilla Richmond,

On behalf of the EPR Leadership Forum (ELF), thank you for the opportunity to provide comments on the proposed revisions to the Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations that were posted on January 29, 2026.

The EPR Leadership Forum is an organization focused on EPR for packaging and paper products, and our membership is comprised of market-leading consumer packaged goods manufacturers and retailers that support well-designed packaging EPR policy. ELF has been actively engaged in the development of successful EPR legislation across the country, most notably in Washington and Maryland.

As an organization that staunchly advocates for efficiency in EPR programs, our efforts are informed by several core principles, which include statutory and regulatory clarity for producers to comply with program requirements. For compliance to run smoothly, producers must be given a clear and structured EPR framework that is implemented with regulatory clarity and informed by real-world data and infrastructure. This rulemaking is focused exclusively on the applicability of the categorical food exclusion, and while we appreciate that CalRecycle has reopened comments on the rule, it is not enough. We are deeply disappointed to see that the rulemaking neither addresses nor resolves other critical issues with similar interpretation barriers, which we, along with many other stakeholders, commented on in the previous public comment period:

- Clarification of the producer definition;
- Allowance for source reduction baseline adjustments based on economic factors;
- Allowing aggregated reporting across material categories by producer;
- Adjustment to the reuse and refill criteria;
- Clarification of de minimis threshold criteria;
- Further clarification of covered material category updates and additional guidance on definitions; and
- Clarification of responsible end market criteria.

While we acknowledge the current rulemaking is seeking to bring clarity to the regulations, we must also acknowledge that larger-scale program clarification is needed and without additional guidance, it will have a significant impact on SB 54 implementation overall. We respectfully implore CalRecycle to prioritize revisiting these issues to avoid certain confusion and challenges as program implementation begins in the coming months and years.

Thank you for the opportunity to engage on this matter, and if you have any questions about our comments, please do not hesitate to contact me at agraham@epr-leaders.org.

Sincerely,

Alchemy Graham
Policy Director

Response to O-62-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

O-63: Atrium 916 (Shira Lane)

Comment O-63-1

Friday, February 13, 2026

California Department of Resources and Recycling
SB 54 Regulation Implementation Team
Packaging EPR Section Regulations Unit
Legal Affairs Office

Submitted by Public Comment Form

SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations
SB54 DRAFT REGULATIONS COMMENTS

Dear CalRecycle,

Thank you for the opportunity once again to submit comments on behalf of Atrium 916 regarding the updated draft regulations for SB 54 with comment due date of today February 13, 2026. Atrium 916 is a Creative Innovation Center for Sustainability based in Sacramento, dedicated to building kind, creative, and practical systems that advance environmental stewardship through circular economy logistics, community engagement, and policy innovation.

The following are our comments, notes and concerns on the changes to the draft regulations released January 29th, 2026.

Response to O-63-1

Comment rejected. No response to this comment is necessary because it is merely an introduction to the commenter's substantive comments. The introduction itself does not address the revisions made to the 45-Day Changes.

Comment O-63-2

ARTICLE 2 CHANGES

We commend and thank CalRecycle for the increase in transparency of the process by having a public database on applications and approvals or denials so it's clear what packaging is covered or receives approval to be a categorical exception. Thank you.

The following are a few considerations we thought to bring to your attention:

1. Section 18980.2 (a) 2 "*mandatory*" – Aren't all the regulations - mandatory? Are some regulations not mandatory?

Response to O-63-2

CalRecycle rejects this comment as described in response to comment O-64-2, which is substantively identical to this comment.

Comment O-63-3

2. Section 18980.2 (a)2 (D) *"At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days."* Assuming this means within 60 days of Department request – but could be interpreted differently.

Response to O-63-3

CalRecycle rejects this comment as described in response to comment O-64-3, which is substantively identical to this comment.

Comment O-63-4

3. Section 18980.2 (a)2 (F) *"If an entity submits a notice concerning the same or substantially the same packaging or packaging components during or after the 180-day period described in subparagraph (E), the packaging or packaging components shall be considered not covered material, with the database updated accordingly, only upon a determination by the Department that the notice and any additional information…"*

Concern on F - It is not covered material until proven it qualifies for the exclusion. But if department finds that the material is covered after going through the whole exclusion process - Any consequences of sort for delaying over a year participation in the program? Wasting departments time and resources, delaying payment into program, delaying reporting, delaying innovation time to meet targets and creating more pressure on other producers to pick up their slack?

If no slap on the wrist, or consequences - then what is to stop bad actors from using this as a useful delay tactic? From our read- it seems there is no risk to doing 'notice' tennis with the department for as long as possible to delay payment of fees. A bad actor could keep sending notices info back and forth and keep the 'dialogue' going. Keeping the producer 60-day response, then department 90-day response going on by providing new evidence.

Is there a time window for when first notices need to be sent in to the department? So it isn't a tag team rolling notice chain reaction?

Example of Rolling Producer Tag Team Chain delay tactic – Producer A sends notice, the department responds in 90 days saying the component is covered material, Producer A then responds within 60 days with a rebuttal, 90 days later the department concludes the component should be covered material and will be covered material within 180 days of their notice. Then producer B submits notice concerning the same or similar packaging on day 175 of Producer A's timeline- Does producer B need to align to Producer A timeline or does Producer B get an additional extension because they submitted their notice later? Can producer A ride on that extension?

What in these regulations stops bogus notices being in circulation for years while the material during that time is not covered. You may have a better solution, but here are our ideas:
1. An initial window for these exclusion notices, and
2. Place clear and appropriate consequences for bad actors using this as a delay tactic.

Thank you again for the opportunity to participate and appreciate all the hard work you do to build our circular economy and for your consideration of our comments. I am available for questions at shira@atrium916.com

With Kindness

Shira Lane, CEO
Atrium 916
Creative Innovation for Sustainability.

Response to O-63-4

CalRecycle rejects this comment as described in response to comment O-64-4, which is substantively identical to this comment.

O-64: Atrium (Shira Lane)

Comment O-64-1

Dear CalRecycle,
I submitted comments a few moments ago with the wrong attachment - my apologies.

Friday, February 13, 2026

California Department of Resources and Recycling
SB 54 Regulation Implementation Team
Packaging EPR Section Regulations Unit

Legal Affairs Office

Submitted by Public Comment Form

SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations
SB54 DRAFT REGULATIONS COMMENTS

Dear CalRecycle,

Thank you for the opportunity once again to submit comments on behalf of Atrium 916 regarding the updated draft regulations for SB 54 with comment due date of today February 13, 2026. Atrium 916 is a Creative Innovation Center for Sustainability based in Sacramento, dedicated to building kind, creative, and practical systems that advance environmental stewardship through circular economy logistics, community engagement, and policy innovation.

The following are our comments, notes and concerns on the changes to the draft regulations released January 29th, 2026.

> **Response to O-64-1**
> Comment rejected. No response to this comment is necessary because it is merely an introduction to the commenter's substantive comments. The introduction itself does not address the revisions made to the 45-Day Changes.

Comment O-64-2
ARTICLE 2 CHANGES
We commend and thank CalRecycle for the increase in transparency of the process by having a public database on applications and approvals or denials so it's clear what packaging is covered or receives approval to be a categorical exception. Thank you.

The following are a few considerations we thought to bring to your attention:

1. Section 18980.2 (a) 2 "*mandatory*" – Aren't all the regulations - mandatory? Are some regulations not mandatory?

> **Response to O-64-2**
> Comment rejected. The commenter objects to the use of the term "mandatory" because it is arguably redundant. However, CalRecycle has added the term for the reasons described in comment I-19-1 and I-59-2 (submitted in response to the 45-Day Changes). See, also, CalRecycle's response to comment B-3-1 for further explanation of the effect of that phrase. As explained in greater detail in those responses, "mandatory" was added in the 15-Day Changes to prevent section 18980.2(a)(2) from being interpreted as authorizing exclusion of

packaging from the Act based on "guidelines" that set forth voluntary standards, not requirements.

Comment O-64-3

2. Section 18980.2 (a)2 (D) "*At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days*." Assuming this means within 60 days of Department request – but could be interpreted differently.

Response to O-64-3

Comment rejected. The comment is sufficiently clear as written. There is no reasonable alternative interpretation of "must be provided within 60 days" except with respect to the date on which CalRecycle requests "additional information."

Comment O-64-4

3. Section 18980.2 (a)2 (F) *"If an entity submits a notice concerning the same or substantially the same packaging or packaging components during or after the 180-day period described in subparagraph (E), the packaging or packaging components shall be considered not covered material, with the database updated accordingly, only upon a determination by the Department that the notice and any additional information…"*

Concern on F - It is not covered material until proven it qualifies for the exclusion. But if department finds that the material is covered after going through the whole exclusion process - Any consequences of sort for delaying over a year participation in the program? Wasting departments time and resources, delaying payment into program, delaying reporting, delaying innovation time to meet targets and creating more pressure on other producers to pick up their slack?
If no slap on the wrist, or consequences - then what is to stop bad actors from using this as a useful delay tactic? From our read- it seems there is no risk to doing 'notice' tennis with the department for as long as possible to delay payment of fees. A bad actor could keep sending notices info back and forth and keep the 'dialogue' going. Keeping the producer 60-day response, then department 90-day response going on by providing new evidence.

Is there a time window for when first notices need to be sent in to the department? So it isn't a tag team rolling notice chain reaction?

Example of Rolling Producer Tag Team Chain delay tactic – Producer A sends notice, the department responds in 90 days saying the component is covered material, Producer A then responds within 60 days with a rebuttal, 90 days later the department concludes the component should be covered material and will be covered material within 180 days of their notice. Then producer B submits notice concerning the same or similar packaging on day 175 of Producer A's timeline- Does producer B need to align to Producer A timeline or does Producer B get an additional extension because they submitted their notice later? Can producer A ride on that extension?

What in these regulations stops bogus notices being in circulation for years while the material during that time is not covered. You may have a better solution, but here are our ideas:
1. An initial window for these exclusion notices, and
2. Place clear and appropriate consequences for bad actors using this as a delay tactic.

Thank you again for the opportunity to participate and appreciate all the hard work you do to build our circular economy and for your consideration of our comments. I am available for questions at shira@atrium916.com

With Kindness

Shira Lane, CEO
Atrium 916
Creative Innovation for Sustainability.

Response to O-64-4

Comment rejected. Regarding the commenter's concern over CalRecycle resources and delaying payment into the program, subparagraph (C) addresses that concern by enabling CalRecycle to reject notices that are faulty on their face or fail to address known packaging that would avoid the conflict cited. Moreover, if successive notices concerning similar packaging are submitted, subparagraph (F) necessarily limits the risk cited by the commenter to the earliest example of a notice that CalRecycle ultimately determines to be insufficient. Once CalRecycle makes that determination and the 180-day period described in that subparagraph begins, submission of a notice does not trigger the exclusion, which would only take effect upon CalRecycle determining that it is meritorious. Although the process does not completely eliminate the risk the commenter identifies, it achieves a reasonable balance between avoiding bad faith claims, delays in program participation, and the need to avoid untenable burdens on both CalRecycle and affected entities , which face heightened regulatory and operational obstacles under relevant federal laws implicating Public Resources Section 42060(b).

Regarding the commenter's concern over a "tag team chain delay tactic," subparagraph (F) forecloses that strategy for abusing section 18980.2(a)(2). In the scenario described, once the 180-day period applicable to "Producer A" begins, any notice submitted concerning similar packaging will not trigger the exclusion unless CalRecycle has determined that the exclusion is justified. Given the protection subparagraph (F) provides, the commenter's suggested solutions are unnecessary.

O-65: Circular Action Alliance (Emily Coven)

Comment O-65-1

Feb. 13, 2026

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

Re: SB 54 Regulations

Dear Ms. Richmond,
Circular Action Alliance (CAA) and its members thank the Department for the opportunity to submit comments on the proposed regulatory text under the Plastic Pollution Prevention and Packaging Producer Responsibility Act, as codified in the California Public Resources Code at Sections 42040-42084 (Senate Bill 54).

CAA is a U.S. Producer Responsibility Organization (PRO) dedicated to implementing effective Extended Producer Responsibility (EPR) laws for paper and packaging. We appreciate that the Department has previously considered recommendations that CAA submitted on May 8, 2024, Nov. 4, 2024, Dec. 17, 2024, June 3, 2025, and Oct. 7, 2025. We are pleased to submit our comments on the formal draft regulations published on Jan. 29, 2026.

We have provided our detailed comments responding specifically to the text that has changed since the prior draft regulations dated Aug. 22, 2025, in the attached submission. We would also like to reiterate our ongoing concern with the following key areas that remained unaddressed in the latest draft regulations. Our specific text recommendations can be found in our prior comments dated Oct. 7, 2025.

Establish Achievable Reporting Timelines

Several key reporting timelines require CAA to submit data in a way that does not provide sufficient time for data validation to ensure compliance. For example, Section 18980.6.5(b) requires CAA to include source reduction data in the first phase of CAA's annual report each year, due July 1. However, as CAA has previously noted, CAA will only receive the source reduction data from producers on May 31. Finalizing this data into an annual report in four weeks does not allow for a robust data review process. Similarly, Section 18980.10.2(a) requires CAA to complete data submissions, separate from the annual report, by July 1 each year. Like the annual reports, these submissions will rely on data CAA receives on May 31, providing very little time for data verification. We recommend modifying these reporting deadlines to require the source reduction

data in the second phase of the annual report, due Oct. 1 each year, and to create a similarly two-phased data submission process and have the source reduction data in the second phase of that submission. This would allow for sufficient data review, ensuring the program operates using the most accurate data possible.

Additionally, CAA previously had no concern with the July 1, 2026, due date for producer baseline source reduction reporting. However, with the possibility that the regulations may not be finalized until after April 1, 2026, CAA is concerned that we will not have sufficient time to meet this due date. At a minimum, we will need 90 days after the regulations go into effect: the initial 30-day window for producers to register and report 2023 baseline supply data to CAA, and 60 days to analyze submissions and prepare the report for the Department. As such, we suggest that the deadline in Section 18980.9(a) be changed from "On or before July 1, 2026" to "On the latter of July 1, 2026, or 90 days after the effective date of this chapter."

Reduce Burdens on Reusable and Refillable Collection

Section 18980.2.1(a)(4)(A)(ii) sets a standard that consumers must be able to return reusable and refillable packaging within one mile of the location it was obtained, with no variance by region. This creates a higher burden on these packaging products than the closest comparative system, the California Beverage Container Recycling Program, which requires covered containers be redeemable within one mile of a supermarket, and up to five miles in rural areas. The draft regulations do not allow for needed flexibility as CAA works with producers to establish collection pathways for these packaging materials. CAA supports harmonizing reusable and refillable collection convenience requirements with those established for CRV, as well as broadening the scope of infrastructure that can be used to satisfy these requirements.

Reinstate Source Reduction Adjustment Language

The draft regulations continue to omit a section spelling out source reduction adjustments that would allow the PRO to account for future increases or decreases in the number of producers participating in the program, as well as economic fluctuations, to craft a practicable source reduction plan. This will create substantial challenges for CAA and producers as we work to meet source reduction targets. CAA recommends reinstating the entire source reduction adjustment section, which was removed in the May 2025 draft regulations.

Simplify De Minimis Exclusion Process

The de minimis exclusion review process remains burdensome in a way that other exclusion processes are not. Exclusions for packaging used for long-term storage, for example, require substantiating evidence only upon request from CalRecycle, but exclusions for de minimis weight or volume require the PRO to file a request, describing in detail and providing supporting evidence for the argument that the material be considered of a de minimis weight or volume. This application process makes it difficult

for CAA to gauge which materials will be excluded under this section, and therefore difficult to provide clear guidance to producers before they report baseline source reduction data in the coming months. We recommend aligning the de minimis exclusion process with the long-term storage exclusion process, ensuring the program operates with the most accurate data possible for source reduction planning.

Producer Definition

CAA proposes that CalRecycle include language such as "directing or performing the manufacturing" in Section 18980.1.1(c)(1), to identify the producer when multiple brands or trademarks are present. This would make it easier to identify the obligated producer in certain situations, and it would harmonize the producer definition with language used in Colorado and Oregon. CAA also proposes adding language to Section 18980.1.1(e) addressing which entity is obligated in the case of a franchisor-franchisee relationship.

Please find our detailed comments on the latest draft text changes, in the following pages.

We would like to thank CalRecycle for the ongoing collaboration with our team and the opportunity to provide our comments on the draft regulations. We would welcome the opportunity to meet with your team to discuss our comments in further detail.

Sincerely,
Emily Coven
California Executive Director
Circular Action Alliance

Response to O-65-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.

Comment O-65-2

Article 2: Covered Material and Covered Material Categories
Section 18980.2. Categorically Excluded Materials

Section 18980.2(a)(2)(A)

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

CAA Response
CAA remains concerned that the draft regulations do not limit the timing of when entities can submit written categorical exclusion notices to the Department. Without a defined timeline, entities may notify the Department at any time that they have determined their packaging is not covered material. This presents challenges for participant producers accurately fulfilling annual supply data reporting requirements, and for the PRO as it sets annual fee schedules.

The PRO must have clarity on the status of any categorical exclusion notices prior to annual supply reporting deadlines. This clarity ensures that participant producers report supply quantities that are as accurate as possible. If the Department accepts categorical exclusion notices after annual supply reports are submitted, producers' supply reports would need to be adjusted downward to reflect the newly excluded materials. In turn, the fee schedules – which are based on annual supply quantities – will no longer reflect the true supply of materials. Collected fees will fall short of covering the costs they were set to cover. This deficit will cause serious challenges for program implementation.

The challenges will be particularly acute during the first program year of implementation, before financial reserves have built up, and with the uncertainty of how categorial exclusions will affect total reported producer supply.
Finally, exclusion determinations will dictate the quantities reporting entities include in their source reduction baseline reports, which are due to the Department by July 1, 2026. It is critical producers have certainty on the status of these exclusions prior to submitting this data.

All these challenges can be addressed if the regulations define a window in which entities may submit exclusion notices. CAA recommends the Department set this window as Jan. 1 to Jan. 31 annually. Additionally, to ensure reporting entities have clarity on exclusions before submitting source reduction baseline reports in 2026, CAA recommends the Department set an initial notice window of within 30 days of the regulations taking effect.

CAA Recommendation
(A) Any entity that has determined that packaging or packaging components are~~is~~ not covered material pursuant to paragraph (2) ~~of subdivision (a)~~ shall provide written notice to~~notify~~ the Department electronically via email. If the Department has published a notice via its website that an online portal is available for use, the notice required by this subparagraph shall instead be submitted electronically via that portal. ~~and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination.~~ The entity shall provide written notice to the Department within 30 days of the effective date of this chapter, and between January 1 and January 31 annually starting on January 1, 2027.

Response to O-65-2

Comment rejected. It is not practical to limit when entities can submit notices that they cannot comply with the Act due to conflicts with federal requirements

because such conflict can arise at any time. For example, the conflict would arise when changes to those requirements occur and any time products use packaging not already addressed in a notice. With respect to challenges that may arise because necessary downward adjustments may render fee schedules no reflect "the true supply of materials," the PRO can address the potential for funding shortfalls by amending its plan pursuant to Public Resources Code section 42051.2(e)(1). Moreover, nothing in section 18980.2 suggests that exclusion notices are retroactive. Accordingly, previous reports would not be deemed inaccurate, and to the extent the "status of exclusions" presents uncertainty, that uncertainty is limited to the 90-day period during which CalRecycle may deem a notice defective. When data concerning packaging is submitted before a notice becomes effective, there would be no uncertainty because the packaging would not yet be excluded from the definition of "covered material."

Comment O-65-3

Section 18980.2(a)(2)(C)

Regulatory Text

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

CAA Response

This added text marks an improvement over the Aug. 22, 2025, draft regulations. The new text requires that, within 90 days of receipt of an exclusion notice, the Department must either confirm that the notice is complete, or require the entity to resubmit it if incomplete. The previous draft regulations did not require the Department make such a confirmation, requiring only that self-determinations submitted by an entity be maintained on the Department's website in a publicly available electronic database. These self-determinations were automatically assumed to be complete and meet the requirements for the exclusion, unless the Department challenged the determination and, upon review, found that the material did not qualify for the exclusion.

Despite this improvement, CAA recommends the Regulations further elaborate that submitted notices must not only contain all required elements, but that they satisfy all required criteria. This will provide notifying entities with more clarity on what their requests should include to be considered complete.

CAA Recommendation

(C) Upon receipt of the notice, the Department shall confirm that the notice is for a food or agricultural commodity and that it contains all elements and satisfies all criteria described in subparagraph (B). If the notice does not contain all such elements or does

not satisfy all criteria or if the Department identifies packaging or packaging components that the notice did not address but that would avoid the cited conflict, the Department shall notify the entity within 90 days of receipt of the notice that the notice is incomplete and requires resubmission pursuant to subparagraphs (A) and (B).

Response to O-65-3

Comment rejected. The commenter's suggestion is to require CalRecycle's complete review of the merits of notices, effectively converting the requirement to an application process or, as other comments have described such a change, to an "authorization-based" scheme. CalRecycle rejects that recommendation for the reasons provided in response to comment O-25-2.

Comment O-65-4

Section 18980.2.(a)(2)(D)

Regulatory Text

(D) The Department shall maintain on its website a publicly available electronic database identifying~~of~~ each ~~such determination~~complete notice, including the packaging or packaging components and associated products identified in the notice, the~~that includes the~~ date the notice was deemed complete, ~~entity name, the specification for the packaging and the associated product(s),~~ and the status of any review of the notice by the Department ~~of such determination~~. Packaging or packaging components identified in the database shall be deemed not covered material unless and until the Department makes a determination pursuant to subparagraph (E) that the notice and any additional information submitted pursuant to that subparagraph fail to demonstrate that the packaging or packaging components qualify for the exclusion.

CAA Response

CAA appreciates that the latest draft regulatory text indicates only complete notices will be included in the publicly available electronic database maintained on CalRecycle's website. However, CAA is concerned that the text creates confusion by stating the public database will include the status of any CalRecycle review of notices. Presumably, CalRecycle will thoroughly review notices to ensure completeness prior to posting them to the public database. Therefore, posted notices will already be reviewed.

CAA believes the draft regulatory text intends to refer to the status of any subsequent CalRecycle review of notices or additional information requested, through the process laid out in Section 18980.2(a)(2)(E). To address this ambiguity, CAA recommends revising the text as written below.

CAA Recommendation

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

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

Response to O-65-4

Comment rejected. The proposed changes are unnecessary because subparagraphs (D) and (E) make clear that the proposed regulation will have the effect the commenter desires. In subparagraph (D), "the status of any review of the notice" logically must encompass "subsequent review of the notice" because subparagraph (E) is the only provision in section 18980.2(a)(2) that can describe any such review. Moreover, nothing in section 18980.2(a)(2) states that the database will no longer identify notices invalidated through the process described in subparagraph (E). Rather, CalRecycle will "update the database accordingly." Subparagraph (D) further necessitates that reading because that subparagraph makes the effect of inclusion of packaging in the database conditional: Inclusion renders packaging not "covered material" only if CalRecycle has not deemed the relevant notice invalid through the process described in subparagraph (E). That condition would be superfluous if items previously deemed excluded were removed from the database.

Comment O-65-5

Section 18980.2.(a)(2)(E)

Regulatory Text

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

CAA Response

The draft regulatory text creates a system in which any "complete" exclusion notification an entity submits to CalRecycle provides the relevant packaging or packaging components at least a 180-day window in which it is considered a non-covered material. That is regardless of whether CalRecycle deems the exclusion warranted or not. CAA believes that when CalRecycle reviews and overturns an exclusion notice, the relevant packaging should be considered covered material retroactive to the initial notification submission, for the purposes of reporting and paying fees to the PRO. This is an equitable way to handle the exclusion process, and avoids potentially incentivizing exclusion requests to receive a de facto 180-day reprieve from being considered a covered material.

CAA believes one exception from this rule could be if CalRecycle overturns an exclusion notice because an alternative material has become newly available since the initial notification submission. In only these cases, CAA believes it is equitable that those packaging and packaging components be considered covered material 180 days following the overturning notification.

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

Response to O-65-5

Comment rejected. CalRecycle rejects this comment because retroactivity would mean that packaging would be considered to have violated the Act since at least as early as submission of the notice, unreasonably punishing entities that submitted notices in good faith, with penalties dependent on the timing of CalRecycle's ultimate review. Exacerbating that problem, the proposed change would also render the 180-day period a nullity for those entities. Also, the initial review process described in subparagraph (C) will ameliorate the commenter's

concern by enabling CalRecycle to identify clearly inadequate or bad-faith submissions. Lastly, the comment would have the overall effect of making the exclusion process an authorization-based one, with the added uncertainty that retroactivity would create. CalRecycle therefore rejects this suggestion for the reasons stated in response to comments O-65-3 and O-25-2.

O-66: The Recycling Partnership (Dylan de Thomas)

Comment O-66-1

February 13, 2026

California Department of Resources Recycling and Recovery (CalRecycle)
Submitted by Email Via: packaging@calrecycle.ca.gov

Dear SB 54 Regulation Implementation Team:

We are submitting for your consideration the attached comments related to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations draft regulations published January 29, 2026 under the 15-day comment period.

Thank you for your team's hard work and for the opportunity to participate.

The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. We strive to represent the interests of the emerging circular economy system as a whole through our SB 54 engagement.

Sincerely,
Dylan de Thomas
VP of Public Policy & Government Affairs
The Recycling Partnership

Attachments:
1. The Recycling Partnership - Comments Related to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act draft Regulations Published January 29, 2026

Attachment 1: The Recycling Partnership
Comments on Draft SB 54 Regulations Published January 29, 2026

Thank you once again to CalRecycle for your continuing efforts to craft workable SB 54 regulations that balance diverse interest holder concerns.

The Recycling Partnership represents the recycling system, and our rulemaking comments are grounded in this perspective.

The Recycling Partnership's mission is to build a better recycling system – one that delivers the economic and environmental benefits our communities and the hundreds of thousands of people who work throughout the recycling industry deserve.

With a major focus on advancing EPR and related policies, The Recycling Partnership helped lead negotiations leading to enactment of SB 54 in 2022, and we have been actively engaged ever since. We are dedicated to maximizing the expansive circular economy benefits of this novel statute and establishing it as a successful model to help drive continued progress in extended producer responsibility (EPR) nationwide.

We have grouped our comments into two priorities.

Priority 1: To retain the potential feasibility of on-time PRO plan approval and EPR program launch, we continue to support CalRecycle's efforts to adopt final regulations at the earliest possible moment.

As reflected in our October 7, 2025, rulemaking submission, we understand that CalRecycle must avoid substantive changes that could trigger yet another 15-day public comment period and associated process steps. At this juncture, four months from the current final deadline for draft plan submittal on June 15, 2026, the critical needs assessment study has still not been published and there is no clear date by which rulemaking can confidently be expected to be complete. These delays, on top of the already wholly unprecedented nature of SB 54 and the tight statutory timetable, are straining development of the new EPR system and could jeopardize the full promise of SB 54.

In this context, adopting regulations as soon as possible is imperative and must be the top priority, notwithstanding our continuing concerns about the federal exclusion provision described below.

There is also an urgent need for CalRecycle to publish additional, plain-language guidance documents, engage in informal discussions to clarify intent, and to consider additional rulemaking as implementation proceeds.

Priority 2: Recommendations Focused on Current Revisions

Table 1 at the bottom of this submission details the Partnership's comments and recommendations that are focused on the revisions shown as mark-ups in the January 29, 2026, draft SB 54 regulations. We generally support these revisions, which we view as modest improvements over the prior language since our key concerns described below are not addressed. Table 1 includes two recommendations that we believe are not controversial and would be within the scope of changes CalRecycle may make without triggering additional comment periods or process delays.

Priority 3: Strong Concerns Over the Exclusion for Federal Conflicts

Due to the imperative to expedite rulemaking we are advocating for minimal additional changes to the current draft regulations. But as detailed in our October 7, 2025, submission, we continue to have significant concerns over certain aspects of the current draft regulations. We believe that, as currently written, the categorical exclusion for federal regulation conflicts in Section 18980.2(a)(2) could be highly disruptive to SB 54. While we hope otherwise, it is plausible that a great many submissions may be received over time, and due to resource constraints and competing priorities, it could be many months or even years before CalRecycle is able to systematically review, research and follow the prescribed process to deny asserted exclusions not satisfying the regulatory standards. And even then, it will be an additional 180 days before the referenced packaging would revert to being considered covered materials. In the meantime, there will be confusion, delays and increased costs as the PRO works to confirm who is an obligated producer, to determine the scope of covered materials subject to fees, and to revise and reassess related reporting, system improvement strategies, and fees.

Again, if not for the overriding need to expedite rulemaking, we would be advocating strongly for the more fundamental changes to this provision outlined in our October 7, 2025, submission. We reiterate them here for the record with some additions, and if CalRecycle does choose to make more fundamental changes to the current draft, we urge you to consider these adjustments:

• Ideally 18980.2(a)(2) should be deleted, with any federal conflicts to be addressed through the existing exemption processes outlined in 18980.2.4, a far more appropriate approach than the one currently proposed. The remaining bullets recommend changes to the current provision, assuming it is not deleted.
• Only SB 54 producers should be allowed to submit exclusions, not all “entities” as is stated in draft regulations. However, regulations should encourage joint applications covering classes of packaging or products, for efficiency.
• Upon receipt of a notification by CalRecycle, the default should be that referenced packaging or packaging components shall be deemed covered materials unless and until the Department proactively determines otherwise.
• CalRecycle should be required (or at least authorized) to make a rapid review and ruling on submissions (beyond a check for completeness) that could include immediate rejection of the claimed exclusion, which would help bolster the efficiency of the process.
• If granted, exclusions should be time limited, lasting perhaps only 2-3 years and then requiring resubmittal. Recycling systems may be improved to the point that the excluded packaging can satisfy both SB 54 and federal requirements.
• There should be an annual deadline (perhaps March 31) for submissions to take effect in the following plan implementation calendar year. For the initial year, the deadline should be within 30 days of regulations being adopted.
• CalRecycle should seek to identify a more objectively measurable standard beyond “not reasonably possible to use other packaging.” We appreciate the modest refinement in the revised regulations to clarify this standard, but it still does not provide an objective, measurable basis for a determination of what satisfies it.

Comments and Recommendations on the January 29, 2026, Revisions to Draft SB 54 Regulations

Regulation Section and Topic

18980.2(a)(2) - Support for modest improvements

Comments and Recommendations

We support the following revisions that result in modest improvements to this provision:
• In paragraph (2): Adding reference to the Act in addition to federal requirements and adding the word “mandatory” to describe the federal requirements covered by this provision. This helps to ensure that only mandatory federal requirements are cited as conflicts, not voluntary elements of guidelines, for example.
• In subparagraph (A): Explicitly stating the provision addresses packaging “and packaging components.” This may help to narrow the scope and focus of submitted notices.
• In subparagraph (C): Explicitly adding a requirement for CalRecycle to determine whether a submission is complete or does not address known packaging or packaging components that would avoid the cited conflict, and to require a resubmittal that corrects these deficiencies.

Regulation Section and Topic

18980.2(a)(2)(B) - Greater specificity is needed in standards for “not reasonably possible"

Comments and Recommendations

We appreciate the clarifying standards for determining whether “it is not reasonably possible to use any such alternative” packaging. However, we recommend that CalRecycle use the same language in clauses (i) through (iii) as is used in paragraph (2) to describe the specific laws referenced, as shown in the edits below. Otherwise, “all legal conflicts” could be interpreted broadly to include any legal conflict not specifically pertinent to conflicts between the Act and specific mandatory federal requirements.

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

(i) There is no such alternative that satisfies all applicable mandatory standards for safety and structural integrity of packaging, creates no new unavoidable legal conflict with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration ~~law~~, and otherwise is lawful to use in California.

(ii) It is not possible to avoid all new legal conflicts with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration by eliminating or replacing the components that cause the conflict cited in the notice and which are otherwise lawful to use in California; and

(iii) It is not possible to avoid all new legal conflicts with any mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration by redesigning or replacing the packaging as a whole in a way that is lawful to use in California.

Regulation Section and Topic

18980.2(a)(2)(E) - More explicit authorization for CalRecycle reconsideration of exclusions is needed

Comments and Recommendations

The regulations should make it explicitly clear that the Department may make multiple requests for information for any reason it deems necessary and may reconsider a prior determination, specifically if new packaging or packaging components may have become available that could eliminate the conflict. Edits similar to the following could do this:

(E)~~(B)~~ At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days. Such a request may be made multiple times and for any reason the Department deems necessary, including but not limited to evaluating whether new packaging or packaging components may have become available that could eliminate any conflict as described in paragraph (2). If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity…, which shall respond within 60 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Department shall determine whether the notice and additional information have demonstrated that each~~the~~ packaging or packaging component qualifies for the exclusion. If the Department determines that the notice and additional information fail to demonstrate that certain packaging or packaging components identified in the notice ~~does not~~ qualify for the exclusion, the Department shall notify the entity via email and

update the database accordingly. Those packaging or packaging components shall then ~~it shall~~ be considered covered material 180 days following such notification~~the Department's decision~~.

Public Comment Period for CalRecycle Trending Toward Recyclable Preliminary Designations

Regulation Section and Topic

18980.3.1(c) – Need for a longer public comment period (at least 60 days) to allow Advisory Board review

Comments and Recommendations

The revisions to this subsection establish a new 30-day limit for public submission of information related to a CalRecycle preliminary designation of trending towards recyclable. We think this is too short a period for interested parties to compile and submit data that could prove important for the Department to consider. Review and feedback from the Producer Responsibility Advisory Board seems critical to the review and would provide an opportunity for the public to make verbal comments and engage in a public discussion of the merits of any preliminary designations.

To provide a reasonable time period and to help ensure the Advisory Board can adjust its schedule, including adhering to mandatory public meeting noticing requirements, we recommend the public comment period be extended to 60 days.

Revised Timeline and Submittal Process to Accommodate Uncertain Rulemaking Adoption Date

Regulation Section and Topic

18980.2(a)(2)(A) and numerous other locations - Revisions allowing electronic submittals via email if the department has not established an online portal

Comments and Recommendations

The revised regulations include slightly different language in numerous places, first appearing in subparagraph 18980.2(a)(2)(A), that allow submission of specified documents via email if the Department has not yet established an online portal, and require use of the online portal if one has been established. **We support these revisions that are necessary to meet the statutory SB 54 deadlines for PRO Plan approval and implementation.**

Regulation Section and Topic

18980.6.1(a) and 18980.6.1(b) - Revisions to the deadline for submission of the producer responsibility plan

Comments and Recommendations

Comment 1: These revisions require the Office of Administrative Law to insert the date of filing with the Secretary of State or April 1, 2026, whichever is later, as the date by which the PRO must submit the Producer Responsibility Plan to the Advisory Board. **We support these revisions that are needed to help ensure implementation advances without delay regardless of when the regulations are adopted, while still allowing the PRO to submit the draft plan by June 15 (date certain) subject to a reduced review period.**

Comment 2: We are concerned that rulemaking could potentially be unexpectedly delayed past June 15. CalRecycle should consider revising these sections to call on the Office of Administrative law to establish a final plan submittal date that is 75 days after the date that the regulations are filed with the Secretary of State, if that date is later than April 1, 2026, consistent with the current revisions.

Regulation Section and Topic

18980.6.1(d), 18980.6.3(b), 18980.7(b) and 18980.7.2(b) – Public comment requirement when PRO / Independent Producer Plan or Plan Update is submitted to Advisory Board

Comments and Recommendations

These sections were revised to require the PRO and an Independent Producer to post its draft Producer Responsibility Plan or Plan Update for public comment when it sends the plan to the Advisory Board, and to consider all public and Advisory Board comments received within 60 days. **We support these revisions that are necessary to meet the statutory SB 54 deadlines for PRO Plan approval and implementation and that are reasonable for future submittals.**

> **Response to O-66-1**
> Comment rejected. CalRecycle rejects this comment for the reasons provided in responses to comments O-59-1 through O-59-11, which are, collectively, substantively identical to this comment.

O-67: USA WTO TBT Enquiry Point (MaryAnn Hogan)

Comment O-67-1

Dear Colleagues with CalRecycle's Department of Resources Recycling and Recovery, Regulations Unit,

Please find attached comments received from China earlier today (2/13/26) on Proposed Changes to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period.

Information on the rulemaking is also accessible as follows:

- **Notice of 15-Day Changes to Proposed Rulemaking.** The notice of changes that have been made to the original proposed regulations.
- **Updated Proposed Regulation Text.** The updated express language that shows any proposed adoption, amendment, or deletion to the regulations.
- **Notice of Proposed Action.** The notice of proposed adoption, amendment, or repeal of regulations.
- **Proposed Regulation Text.** The express language that shows any proposed adoption, amendment, or deletion to the regulations.
- **Initial Statement of Reasons.** An explanation of all proposed changes to the regulations.

A copy of notification with the symbol G/TBT/N/USA/2088/Rev.1/Add.1 is attached (these symbols are similar to docket or reference numbers) assigned to this CalRecycle action by the Committee on Technical Barriers to Trade at the World Trade Organization (WTO TBT Committee), to which our office is obligated to submit certain U.S. state and Federal proposed rules and related actions that could affect international trading partners. A basic overview of the notification of certain regulatory and related actions by the USA to the WTO TBT Committee is available at https://www.nist.gov/standardsgov/usa-wto-tbt-enquiry-point.

In addition to sharing these comments by e-mail, we have also submitted them using CalRecycle's online public comment form. A copy of the e-mail confirmation for the submission is attached.

Thank you and best regards,

MaryAnn Hogan
USA WTO TBT Enquiry Point
Standards Coordination Office (SCO)
National Institute of Standards and Technology (NIST)
E-mail: usatbtep@nist.gov
ePing SPS&TBT Platform: https://epingalert.org/
About Us: https://www.nist.gov/standardsgov/usa-wto-tbt-enquiry-point

NOTIFICATION
Addendum

The following communication, dated 30 January 2026, is being circulated at the request of the delegation of the United States of America.

Title: Notice of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Reason for Addendum:
[ ] Comment period changed - date:
[ ] Notified measure adopted - date:
[ ] Notified measure published - date:
[ ] Notified measure enters into force - date:
[ ] Text of final measure available from1:
[ ] Notified measure withdraw or revoked - date:
Relevant symbol if measure re-notified:
[X] Content or scope of notified measure changed and text available from1:
Proposed Changes to the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations 15-Day Comment Period
https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/
https://members.wto.org/crnattachments/2026/TBT/USA/modification/26_00645_00_e.pdf
https://members.wto.org/crnattachments/2026/TBT/USA/modification/26_00645_01_e.pdf
New deadline for comments (if applicable): 13 February 2026
[ ] Interpretive guidance issued and text available from1:
[ ] Other:

1 This information can be provided by including a website address, a pdf attachment, or other information on where the text of the final/modified measure and/or interpretive guidance can be obtained.

Description: The California Department of Resources Recycling and Recovery (CalRecycle) is providing an additional 15-day public comment period, which began 29 January 2026 and ends on 13 February 2026.

Current Documents

• **Notice of 15-Day Changes to Proposed Rulemaking.** The notice of changes that have been made to the original proposed regulations.
• **Updated Proposed Regulation Text.** The updated express language that shows any proposed adoption, amendment, or deletion to the regulations.
• **Notice of Proposed Action.** The notice of proposed adoption, amendment, or repeal of regulations.
• **Proposed Regulation Text**. The express language that shows any proposed adoption, amendment, or deletion to the regulations.
• **Initial Statement of Reasons.** An explanation of all proposed changes to the regulations.

WTO Members and their stakeholders are asked to submit comments to the USA TBT Enquiry Point by or before 4pm Eastern Time on 13 February 2026. Comments received by the USA TBT Enquiry Point from WTO Members and their stakeholders will be shared with CalRecycle if received within the comment period. Comments will be submitted electronically: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act 15-Day Comment Period

Background: CalRecycle is proposing permanent regulations for Senate Bill (SB) 54.

SB 54 establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which imposes minimum content requirements for single-use packaging and single-use plastic food service ware, to be achieved through an extended producer responsibility (EPR) program.

California's landmark packaging law is the most significant overhaul of California's plastics and packaging recycling policy in history. It goes further than any other state on cutting single-use plastic at the source and represents a giant step toward a more circular economy that is essential to combat climate change.

The law establishes California's largest EPR program by regulating several thousand producers — as many as an estimated 5,741 — whereas other California EPR programs regulate fewer than 1,000 producers.

The legislation shifts the plastic pollution burden from consumers to producers, typically the companies that create — or package their products in — single-use packaging and single-use plastic food service ware. Producers must pay $5 billion over 10 years — $500 million per year beginning in 2027 — to:
• Address the environmental impacts of plastic pollution and
• Aid affected environmental justice communities most impacted by the damaging effects of single-use plastic waste.

The law requires producers to ensure that by 2032:
• 100% of single-use packaging and single-use plastic food service ware sold in the state is recyclable or compostable
• 65% of single-use plastic packaging and single-use food service ware is recycled and
• 25% reduction, compared to 2023, in the sale or distribution of single-use plastic packaging and single-use food service ware.

The law requires CalRecycle to adopt permanent regulations.
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations:
https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/

Comments from P. R. China on Notification G/TBT/N/USA/2088/Rev.1/Add.1

Notice of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

Dear Sir or Madam,

We appreciate the opportunity to submit comments on the notified draft proposed by USA.

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of the comments by e-mail to tbt@customs.gov.cn.

Thank you very much in advance for USA taking into account comments from P.R. China. Your formal reply will be appreciated.

Best regards,

Jiao Yang
Deputy Director General
China WTO/TBT National Notification & Enquiry Center
No.20, Hepingli East Street, Dongcheng District, Beijing
Post Code: 100013
Tel: 86-10-57954605
Fax: 86-10-57954683
E-mail: tbt@customs.gov.cn

Comments from P. R. China on Notification G/TBT/N/USA/2088/Rev.1/Add.1

Notice of SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations

The People's Republic of China appreciates USA for fulfilling the transparency obligation under WTO, as well as for the opportunities for other WTO Members to make comments on the notification G/TBT/N/USA/2088/Rev.1/Add.1. According to Article 2.9.4 of the WTO/TBT Agreement "without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account", China would like to put forward the following comments on the notified regulations and hope USA take these comments into consideration. The detail comments as follows:

1. Regarding to Section 18980.1(17) the definition of "producer" is too broad, which may increase import compliance costs and create trade barriers; recommend amendment.

The scope of “producer” in Section 18980.1(17), which references subdivision (w) of Section 42041 of the Public Resources Code, is overly broad. Specifically, when the brand owner or licensee is not located in the state, the person who imports covered material into the state for sale or distribution is deemed the producer. This shifts obligations—such as registration, participation in a Producer Responsibility Organization (PRO), regulation compliance, fee payment, and reporting—onto importers. Importers may refuse to import non-local products to avoid excessive administrative burdens. In contrast, California-based manufacturers can more easily fulfill these obligations directly. This responsibility-shifting mechanism may indirectly discriminate against imported products and increase the difficulty and cost of accessing the California market. Therefore, it is recommend referencing the EU regulations by introducing an “authorized representative” mechanism, allowing non-California brand owners to appoint, via written agreement, an authorized representative located in California to fulfill all producer responsibilities. Alternatively, establish a “compliance traceability exemption” whereby downstream importers are automatically exempt from relevant responsibilities if the upstream foreign producer has fulfilled compliance obligations through a PRO or directly with the Department. These measures would reduce the compliance burden on importers and eliminate potential trade barriers.

2. Regarding to Section 18980.1(4), each detachable component shall be considered individually which may lead to unnecessary compliance complexity; recommend amendment.

In the subdivision (B) of subparagraph (4), Section 18980.1(a), each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached. This requires multi-component imported packaging to be evaluated component-by-component for plastic source reduction, recycling rates, recyclability, and other indicators when entering California, significantly increasing compliance complexity and potentially creating trade barriers. Globally standardized packaging may need specific design or supply-chain adjustments for the California market. Therefore, it is recommended to align with the EU Packaging and Packaging Waste Regulation (PPWR) by permitting holistic assessment of packaging units to reduce unnecessary trade restrictions.

3. Regarding to Section 18981 that Third-party Certification Entity need to obtain approval from the California Department of Resources Recycling and Recovery (Department); recommend amendment.

Although international standards such as ISO/IEC 17065 are cited, section 18981(c) requires Third-party Certification Entity to request and obtain approval from the Department, and Section 18981(d) states that the approval is valid for only five years. This additional administrative approval procedure may cause delays for foreign Third-party Certification Entities already recognized under international standards to enter the California market, increasing the time and financial costs of regulation compliance for exporters using their services. It is recommended to add provisions stipulating “automatic approval” or a “registration system” for Third-party Certification Entities that have obtained recognition under the IAF/ILAC international mutual recognition

agreement, to avoid creating unnecessary trade barriers for imported products and related entities (TBT 5.1.1)..

Comments in Chinese are in below:

中国对G/TBT/N/USA/2088/Rev.1/Add.1 通报的评议意见

中国赞赏美国履行WTO 透明度义务， 给予其他WTO 成员评议 G/TBT/N/USA/2088/Rev.1/Add.1 号通报的机会，根据WTO/TBT 协定2.9.4 条"无 歧视地给予其他成员合理的时间以提出书面意见，并对这些书面意见和讨论的 结果予以考虑"的规定，请美国对中方的评议意见予以考虑并作出答复，中方 意见及论述如下：

1.针对18980.1 条第（17）项中的"生产者"范围过于广泛，可能会引起进口 合规成本增大，导致贸易壁垒，建议修改。

18980.1 条中第（17）项中的"生产者"援引自《公共资源法典》中42041 条的（w）款，定义过于宽泛。其中明确当品牌所有者或被许可人不在州内的 情况下， 将覆盖材料进口至州内进行销售或分销的人将被视为生产者。在此情 况下， 注册、加入生产者责任组织（PRO）、合规、缴费、报告等义务将被转 嫁给进口商，可能导致他们因为不想承担过度行政负担而拒绝进口外地产品。 相比之下， 加州本地制造商更容易直接履行义务。这种责任转移机制可能间接 导致对进口产品的歧视，增加外地产品进入加州市场的难度和成本。建议参考 欧盟的生产者责任延申法规，引入"授权代表"机制， 允许非加州的品牌所有 者通过书面协议指派一名位于加州的"授权代表"来履行所有生产者责任；或 建立"合规追溯豁免"机制， 如果上游的外国生产商已主动通过生产者责任组 织或直接向部门履行了合规义务，则处于下游层级的进口商应被自动豁免相关 责任。这样可减轻进口商的合规负担，消除潜在的贸易壁垒。

2.针对18980.1 条第（4）项中将可分离组件单独归类评估，可能导致不必 要的合规复杂性，建议修改。

18980.1条第（a）款（4）项（B）目提到中将可分离组件单独归类评估， 而非与主物品整体归类。这使得多组件进口包装产品出口加州时需逐组件评估 源头减量、回收率、可回收性等指标，显著增加了其合规复杂性，可能导致潜 在的贸易壁垒，导致全球标准化包装在加州市场需特别调整设计或供应链。建 议参照欧盟《包装与包装废物法规》(PPWR)， 允许对包装进行整体评估，以减 少贸易障碍。

3.针对18981 条中第三方认证机构的资质必须得到加州资源回收再利用部 批准，建议修改。

虽然法规引用了ISO/IEC 17065 等国际标准，但在（c）款中要求第三方 认证实体必须向加州资源回收再利用部提交申请并获得批准，且（d）款中说明 批准有效期仅为五年。这种额外的行政审批程序可能导致已受到国际标准认可 的外国第三方认证机构进入加州市场的延迟，增加其服务的出口商的合规时间 和金钱成本。建议增加条款规定对于以获得IAF/ILAC 国际互认体系认可的第 三方认证机构实施“自动批准”或“登记制”，避免对进口产品及相关机构造 成不必要的贸易障碍（TBT 5.1.1）。

Response to O-67-1

Comment rejected. No response to this comment is necessary because it does not concern the revisions made to the proposed regulations.