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
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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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*

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10 2023. “ISCC Press Release July 27, 2023.” *International Sustainability & Carbon Certification*
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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
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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
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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

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[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

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[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.**

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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
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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. <u>Cosmetics are a federally regulated category not granted an opportunity to apply for an exemption pursuant to Section 18980.2 (a)(1)(2).</u>

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 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.

Sincerely,

Mark Pits
Interim Vice President, Industry Affairs
American Forest & Paper Association

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.

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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_Invesg_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

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[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
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NICK SCHULTZ
Assemblymember, 44th District

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Assemblymember, 28th District

cc:

The Honorable Gavin Newsom
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Nani Coloretti
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Zoe Heller
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[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.

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).

Specific Recommendations:

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

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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

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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.

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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.