



Agricultural Council
of California



7 October 2025

Ms. Zoe Heller
Director
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025

Comments submitted via: <https://calrecycle.commentinput.com/?id=VfBKce95R>

Re: Comments regarding the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) updated regulatory proposal.

Dear Director Heller,

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.

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

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

Section 18980.1.1. Producer Identification

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

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

ARTICLE 2: Covered Material and Covered Material Categories

Section 18980.2. Categorically Excluded Materials

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

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

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

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

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

Packaging changes could also require new machinery upgrades and/or entirely new equipment, since packaging lines are specifically designed by material type and package size. If new machinery must be purchased, a single food processing machine can cost \$30 million to \$100 million. In many cases, these costs are unsustainable for agricultural businesses and will lead to business closure or relocation out of the state. In rare cases, where an agricultural business can sustain this cost increase it will be passed through the supply chain to the consumer. None of this includes the actual costs into research and development for new packaging or the costs for implementing the regulation.

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

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

Our coalition is concerned about Section 18980.2.(a)(2)(A) and its requirement of CalRecycle to publish, on a publicly available electronic database, the entity name and product specifications, of producers seeking exclusions based on conflicting regulations.

While CalRecycle is mandated to withhold from the public information that may be identified as a trade secret, this is not sufficient assurance that information about producer products will not be released to the public and potential competitors. It is highly likely these entities could become a target for litigation or public shaming. Entities should not be exposed to targeting by the public or competitors for determining a product falls within the categorical exclusion for any reason.

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

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

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

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

Sections 18980.2.2. Exclusion for Certain Types of Packaging

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

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

Section 18980.2.4. Exemptions for Certain Covered Materials

This coalition appreciates the Department’s recognition of the need for exemptions of certain covered materials. However, we remain concerned about the language contained in

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

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

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

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

Section 18980.2.5. Covered Material Category List Updates

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

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

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

“18980.2.5

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

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

These recommended changes to the draft regulatory text recognize the need for more consistent updates to the CMC List. As covered materials change as a result of the Act, annual updates will fall short of what producers, suppliers, and end-use markets need to make management and planning decisions to remain compliant and achieve the highest rate of recyclability.

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

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

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

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

Maintaining this unnecessary distinction between the two types of cartons increases the cost to California consumers, the PRO, and CalRecycle by requiring additional composition study sorting, additional data collection, calculation of two instead of one recycling rates, and separate cost allocation to each carton type.

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

ARTICLE 3: Evaluations of Covered Material and Covered Material Categories

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

Shifting packaging away from plastic will require substantial effort and resources. Requirements of the act should be inclusive of all alternatives to plastics. Agricultural waste is a well-established waste stream with multiple alternative uses for its byproducts. Many are used in packaging or container components already. To accommodate for the use of agricultural byproducts in alternative packaging we recommend the following language be included in the Act.

In Section 18980.3.4(a)., we propose the following language be added (proposed additions in italics):

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

ARTICLE 5: Requirements for Producers

Section 18980.5. Producer Compliance

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

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

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

Section 18980.5.2. Exemptions for Small Producers

This coalition would like to raise concerns regarding the exemptions for small producers outlined in the Act. Producers with gross sales within California under \$1 million in the most recent calendar year may apply for an exemption. The application is subject to approval and “applicants” must register as producers before they are considered exempt. These fees and accounting obligations will surely add to the costs of our products to consumers.

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

ARTICLE 9: Source Reduction Baseline Report and Annual Reports

Section 18980.9. Source Reduction Baseline Report

Given the substantial delay in an approved final regulation, which subsequently delays the development of a plan from the PRO, our coalition is recommending changes to Article 9 Sections 18980.9. to accommodate for the delays.

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

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

“18980.9

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

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

ARTICLE 10: Registration and Data Reporting Requirements

Section 18980.10.2. Data Report Contents

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

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

This proposed regulation requires a level of detail that may exceed the comprehensive record-keeping practices traditionally maintained by many producers, whose existing systems were not designed to track data for this regulatory purpose and will require significant refinement. While producers are committed to meeting these requirements, we respectfully request that the regulation include "good faith" language acknowledging the

challenges of this initial reporting period. Specifically, producers are being asked to retrospectively compile data spanning three years, which will often necessitate estimates derived through various sources, rather than data tracked through systems specifically designed for this reporting purpose.

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

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

Reporting Guidance:

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

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

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

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

Plastic Pollution Mitigation Fund:

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

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

Sincerely,



Emily Rooney, President/Executive Director
Agricultural Council of California
Plant California Alliance



Manuel Cunha, Jr., President
Nisei Farmers League



Katie Davey, Executive Director
Dairy Institute of California



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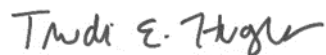
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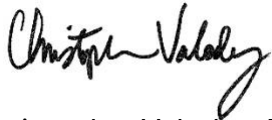
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