Agricultural Council
of California

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Comments re: CAA California Program Plan

Submitted via e-mail and the following link:
https://www.surveymonkey.com/r/CAprogramplan

Dear Ms. Coven:

Thank you for your partnership with the business community as it relates to the implementation of SB 54. We realize this regulation is extraordinarily complex and costly. At the same time, we look to Circular Action Alliance (CAA) as we try to find ways to harmonize California's version of Extended Producer Responsibility (EPR) with other states. CAA has been put in an important leadership role as it relates to EPR implementation nationwide and as such, we are grateful that we can engage with CAA at the California Board level and through industry stakeholder meetings.

Agricultural Council of California (Ag Council) represents approximately 15,000 farmers across the State of California from small, farmer-owned businesses to some of the world's best-known brands. We are highly engaged in SB 54 due to the nature of our packaging. We represent the diversity of food and agriculture. Our members take the food and products they provide and it's packaging very seriously. In our industry, packaging must be protective of its contents and provide shelf life and prevent the spread of environmental and human health diseases and contamination. Therefore, we support the underlying mission of providing more practical ways to deal with packaging and creating the necessary path toward more improved infrastructure in this space.

General Comments:

We are pleased to see that CAA plans to update the program plan between now and October 2026. We are hopeful that CAA will continue to adjust as milestones are achieved or missed and as we learn more throughout this regulatory process.

Ag Council's central concern of the plan is that there are no cost containment mechanisms anywhere throughout the document. Most of California's major regulations have some sort of consideration for mediating costs, such as California's Cap and Invest program, as an example. It has been widely expected that SB 54 will cost over $20 billion and yet, CAA has not taken any serious attempts at reducing or mitigating costs. In food and agriculture, those costs will be pushed down to the farm level, or absorbed throughout the supply chain, further putting increasing pressures on groceries and other food and agricultural products at

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the retail level. SB 54 is expected to drastically increase costs on California's consumers amidst an affordability crisis and CAA must consider measures to minimize costs.

An additional concern of the plan is that there is no discussion regarding business shrinkage, development or growth in California, when comparing to the 2023 reported baseline numbers. How does CAA adjust the 2023 baseline for acquisitions or divestitures or entry into California after 2023? California's business community is going through extensive mergers and acquisitions as part of the routine business economy; it is our hope that there is an equitable way to adjust underlying baselines accordingly.

Chapter 2: Reimbursement and Payment Process

2.6.1 Payment Compliance and Accountability

One of the topics that was not covered in the plan is that of how the various states interact with one another. Participants in the regulation may over-pay in one state but CAA is not allowing that credit to be applied to their invoices in another state. Through a simple accounting adjustment, such as the use of "restricted assets," these funds should be able to be utilized elsewhere. It is imperative that while the regulation is complex, that the user engagement with CAA is as efficient as possible.

2.6.1.5 Audit and Verification

Ag Council supports creating transparency of the fee process through CAA's proposal to conduct audits throughout the duration of the regulation. We encourage CAA to hire a third party to conduct annual financial audits of its own business entities and share those findings with the regulated business community because CAA is funded 100% by its stakeholders. This will greatly increase transparency and trust between CAA and the regulated community.

2.7 Dispute Resolution

The plan details a resolution process for eligible covered cost determinations and reimbursement, but does not include dispute resolution for invoices, supply classifications, audits, eco-modulation decisions, penalties or special assessments. Ag Council urges CAA to offer a similar process throughout other parts of the regulation due to its complexity and staged implementation process.

Chapter 3: Materials Strategy and Covered Material Category Compliance Plan

In Chapter 3, CAA highlights that over 98% of residential generators statewide are subscribed to onsite curbside recycling collection service. Additionally, California's recycling services are more robust that in other states, "but gaps remain." It is hard to believe with so much coverage in California, we still have such a costly program in SB 54.

Ag Council appreciates CAA's recognition that rural and other communities are disproportionately impacted as it relates to infrastructure. In geographies that do not have infrastructure to take on certain types of products, a strategic and concerted effort should be made to seek General Fund dollars to design a plan to manage take-back centers or delivery sites. These sites must be managed, easily accessible and specific to certain types of products and regions.

3.4.6 Intervention Plan for Each Material Grouping

In the table in this section, CAA highlights the outlook for certain materials that are challenged in achieving compliance. We appreciate CAA's consideration of utilizing the Unique Challenges Exemption (UCE) to assist with these products; however, we lack viable plans for certain materials. Some of these materials are vital in the food and ag industry and are essential to maintain food safety, product integrity and safety throughout the harvest and shipping process. Before CAA determines that materials need to be "phased out to achieve compliance," it should work with the producers using these materials to assess their importance to the sector and the availability of cost-effective, viable alternatives. Based on that assessment, CAA should then determine whether the material warrants an off-ramp or whether the packaging should remain in the market and create another pathway for reductions.

We believe that for certain package types, producers should be able to make the case to CAA for the need for the package type prior to phase-out. Packaging may be required for food safety, to maintain shelf life, for certain agricultural uses, to prevent product loss, to protect worker safety, to prevent transportation damage, and/or to meet federal requirements. CAA's calculations may show that certain materials may need to be phased out, however the underlying use of the material should be considered.

3.4.9.2.3 Exclusions for De Minimus Plastic

CAA's plan outlines a circuitous process for reporting de minimus products. We agree that de minimus materials are not considered packaging under the regulation and therefore do not have to be reported. Producers should have the right to self-determination in this section of the regulation. Having to account for and report, then subtract, de minimus materials could lead to overreporting and confusion throughout the process. Additionally, the regulation states that de minimus considerations are granted expressly by CalRecycle, not CAA. If CAA wishes to apply for additional de minimus exemptions, that is not a mandated activity. Ag Council believes that de minimus products are exempt from reporting to CAA for the entirety of the program.

3.4.9.1 Exclusions and Exemptions that Narrow the Scope and Tonnage of Covered Materials Addressed in the Program Plan (and) 3.4.9.2.4 Exemption for Unique Challenges

CAA lays out a variety of scenarios and products that could benefit from UCEs. Ag Council opposes fees that will have to be paid through the UCE process, particularly as they are on the way to meeting the mandates under the regulation.

That said, we would appreciate clarity on how CAA plans to allocate compliance and redesign obligations among producers covered by a group exemption. Additionally, it is not stated whether or not exempt CMCs will still be subject to maluses or special assessments.

While CAA can apply for UCEs to CalRecycle, Ag Council also believes that producers should be able to apply for UCEs directly to CalRecycle as well. This could create efficiencies in the process for materials that are specific to certain uses and conditions that are not yet on the radar screen of CAA.

Chapter 5: Responsible End Markets

Ag Council is seeking more clarity as it relates to Responsible End Markets (REMs). CAA will be collecting fees on all materials, inclusive of those that are not currently recyclable. Questions remain on what will happen to materials that aren't recycled and how funds from those materials will be spent in the interim. Will producers be underwriting fees for those materials to go straight to landfill? If so, wouldn't it be more efficient to send them there directly and not collect fees until there are specific end markets that are fully developed? This could be one cost-cutting measure. The plan also lacks information regarding how the funds will be spent to develop REMs. We look forward to further clarity in this space.

Chapter 6: Source Reduction

Ag Council believes that all of food and agriculture should be exempt from source reduction requirements and specifically regarding plastic components. Plastic has specific qualities to protect all forms of food from contamination and spoilage. Furthermore, the while the unique challenges exemption process may be helpful, the timeframe is too short and the cost is too high to incentivize and allow meaningful transformation in this space, even if it is possible, which we do not know at this time. For these and many other reasons, source reduction mandates should be prohibited from applying to food and agricultural products.

Ag Council urges CAA to consider a strategy to adapt to changing business dynamics in California. Utilizing the 2023 baseline for the basis of source reduction and related fees could be an unworkable foundation for some businesses. While baseline numbers are useful from a regulatory standpoint, CAA should outline a strategy in the event a business was not in existence in 2023 or has experienced expansion, downsizing, mergers or acquisitions.

6.2.1.1 Source Reduction Target Challenges

Given the late implementation of the SB 54 regulation and lack of infrastructure and clarity with the regulation, Ag Council fully supports CAA's plan to file a UCE as it relates to the 10% source reduction target. We believe many challenges with infrastructure will still be present when the next threshold is to be achieved, therefore, we urge CAA to consider future UCEs for source reduction on an as needed basis.

6.3: Incentives Program for Packaging Innovation

Ag Council has advocated for the creation of a packaging innovation program since the inception of SB 54. In the plan, CAA recommends funding it through the use of malus fees, however, we believe it should be funded through the Plastic Pollution Mitigation Fund (PPMF). Packaging innovation supports the underlying mission of the PPMF, to minimize single use packaging and alleviate pressures on local communities and waste managers. This would free up the use of malus fees to go toward another cause. Additionally, aligning maluses and bonuses as suggested on page 213, creates an inherent conflict of interest.

6.3.3.3 Bonuses Aligned with CAA Reuse Investment Strategy

While Ag Council supports the incentives provided by this strategy, it will likely be of little use to the food and ag industry. Reusing packaging could cause a host of health and safety issues for consumers. We do appreciate bonuses provided for transport packaging, and any prefill options offered by individual producers, in cases that it may work.

6.4.1 Integrated Incentives

Ag Council is hopeful that the business community will be able to fully maximize the integrated incentive program CAA has highlighted in this section. It would be helpful if CAA specifically outlined the size and scope of incentives so that regulated entities could easier project final costs of any of these incentivized practices.

6.4.5.3: Operational Focus

Ag Council appreciates CAA contemplating potential cost savings and investment in areas such as B2B and B2C businesses. When it comes to refill, reuse and transportation of certain types of packaging, we must be vigilant as to not to exacerbate the spread of human health issues and environmental diseases and pests. These examples must be considered on a case-by-case basis.

As an example, CAA lists reusable nursery trays as a priority investment area, but this could exacerbate the spread of pests throughout the state of California, similar to what we've seen with the recent expansion of the Glassy Winged Sharpshooter. Many County Ag Commissioners may have concerns with these types of programs. Historically, the nursery industry has envisioned container take back programs, but they have not been widely expanded due to the need to sterilize pots and trays (which could impact water use) and therefore have chosen to minimize the movement of nursery containers. Similar analogies could be used for food use and reuse and refill activities. While the ag community would be interested in various pilot programs surrounding reuse and refill, safety standards should be considered when creating pilots or policy that include food and agriculture.

Chapter 8: Budget Development for SB 54 Implementation

We are thankful CAA is undertaking an effort to show more transparency around the budget and fee process, but there is still more work to do. Ag Council agrees transparency and efficiency have to be key to this process and we recommend that CAA have a stakeholder committee that watches the budget process, similar to stakeholder committees at the California Department of Food and Agriculture (CDFA).

At CDFA, most industry-funded programs have an oversight committee which assists with fiscal decisions and forecasting assessments. This group will also help prioritize needed actions and next steps on any given issue. Additionally, many programs at CDFA have a cap on administrative expenses so that admin expenses don't exceed program implementation costs. CAA could use CDFA's oversight model within its budget process.

8.3 Preliminary Program Budget

CAA projects a preliminary five-year budget of $9-$17 billion. The charts and brief explanations are useful, but the plan does not really speak to the fiscal process CAA undertakes as it creates its projected budgets. Does CAA have an internal process for how it determines any specific budget cost? What does oversight look like in this process? The chart provided within the plan is helpful, however it is not very detailed. As such, there are several questions, including but not limited to:

- Do education and outreach expenses need to be handled through the PRO or can the PPMF handle the bulk of those activities?
- How does CAA determine how much will be spent in any given area? Are there any fiscal caps on any of the line items?
- How will CAA determine which activity (and therefore funding scenario) they will conduct?
- How was forecasting conducted to account for possible inflationary costs?
- Has CAA considered attempting to get General Fund or federal dollars to assist with reducing any of these fees?

Similar questions can be asked in virtually any of the activities laid out in the plan. Clarity can be brought to decisions made surrounding infrastructure investments, end-market subsidies, incentive and malus payments, CAA administrative costs, consulting and studies and project cost overruns.

We are hopeful that CAA will continue to improve transparency by providing numbers and line-item budget(s) for the entire process. This would demonstrate how much of the funds are going toward implementation, improved infrastructure and outline ROI on various aspects of the program. It would also prevent duplication with any activities funded by the PPMF.

Furthermore, providing more specifics surrounding all of the bonus, malus and incentive programs would make it much easier for the business community to project their total costs of this regulation and determine which activities would be most beneficial in terms of compliance as well.

Chapter 9: Fee Setting

Ag Council appreciates CalRecycle's and CAA's recognition that this first-of-its-kind program has created uncertainty within the market and food and agriculture is working toward compliance while simultaneously understanding the full impact of this complex regulation. We value the partnership.

In this regard, we welcome the highlighted process outlined in the fee-setting process that CAA has shared in the plan. The two-year phased-in approach as it relates to fee-setting and penalties is helpful and we would like a better understanding of how both processes will unfold over time, with as much specificity as possible. This could ensure clarity and equity throughout the process. We also value CAA's attempt at harmonizing fees across the United States. We know this is a challenge, but the business community appreciates the approach.

Ag Council acknowledges the outreach CAA has conducted to explain the 4-part fee formula, but more information is needed on the "cost to manage," (CTM) figure. As CAA develops and provides additional detail in this area, Ag Council urges the PRO to create caps and cost mitigation measures in an effort to minimize fees. Ag Council also requests robust financial transparency measures and annual audits to be provided for public review.

9.5.1 Fee-Setting Requirements

Some of Ag Council's members have observed that the 2026 fee schedule does not seem to reflect that materials with established collection and viable end markets have a positive value and/or are charged lower fees. At this point, our members have only seen illustrative fees that provide a range of potential costs. Materials that have a pathway to recyclability should not be penalized to ensure the remainder of the regulation is fully funded.

Thank you for your time and consideration of our concerns and feedback. We look forward to working with CAA throughout this process to find workable solutions for both the PRO and the food and ag community. If you have any questions, please feel free to reach out to me at emily@agcouncil.org.

Sincerely,

Emily Rooney

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President

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