IDFA
International
Dairy Foods Association

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.

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.

    - 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.

    - 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.

- 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.

    - 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.

    - 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.

- 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.

- 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.

- "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.

- 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.

    - 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.

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,



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