IDFA
International
Dairy Foods Association

June 3, 2025

To be filed electronically via CalRecycle Portal

Claire Derksen, Regulations Unit
California Department of Resources Recycling and Recovery (CalRecycle)
1001 "I" Street, MS-24B
Sacramento, CA 95814

Re: CalRecycle's Proposed Changes to Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) Draft Regulations

The International Dairy Foods Association (IDFA) appreciates CalRecycle's effort to allow additional public comments on the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) draft regulations published by CalRecycle on May 16, 2025. IDFA, Washington, D.C., represents the nation's dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate $198 billion in total wages and $779 billion in overall economic impact. California is the nation's largest dairy producing state where dairy products have a $86.21 billion total economic impact, providing 325,100 direct and indirect jobs. IDFA's diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent most of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in California, the United States and sold throughout the world. Delicious, safe and nutritious, dairy foods are foundational in American's diets and offer unparalleled health and consumer benefits to people of all ages.

The goals of SB 54 are transformational, as are the costs associated with its implementation. IDFA believes that the current draft regulations provide some much-needed flexibility for the Producer Responsibility Organization, producers and other stakeholders. Below we offer additional input on behalf of our members to provide even more flexibility that will help dairy processors reach the circularity goals of SB 54 and SB 343.

Section 18989.1. Producer Identification

Whether a company is identified as a "producer" (producer henceforth) under California law is a fundamental question for any dairy foods company, thus IDFA appreciates CalRecycle's efforts to make the producer definition clear and understandable to all stakeholders. Dairy food and marketing supply chains are complex, making it challenging to devise a meaningful producer definition that captures all food and food related industries. In the Informal Rulemaking Workshop materials, CalRecycle shared plans to publish non-rulemaking illustrations of how the regulations would apply to various circumstances. IDFA supports that effort and offers examples that would be meaningful to the dairy processing industry, and likely other food industry sectors as well. For the dairy industry, the following categories are common business arrangements,

along with questions that IDFA would ask CalRecycle to consider in developing its scenarios: Private Label/Co-manufacturing: Brands and trademark owners (collectively, brands) often contract with third-party manufacturers to formulate, process and package the brand's dairy products. In these business arrangements, the private label or co-manufacturer does not own or license a brand but instead manufactures and packages the brand's dairy product in accordance with the brand's specifications via contract. It is important that CalRecycle's regulations clearly provide that the private label manufacturer or co-manufacturer is not designated as a producer.

Imports: Some finished dairy products are imported from other nations, and they may pass through several distributors before entering California. CalRecycle should consider developing a scenario or clarifying through its regulations if the distributor that brings a dairy product into the state of California is the producer, even if the product includes a foreign brand or trademark.

Business-Business Transactions: There is a robust business-to-business dairy supply chain because dairy products are often used as ingredients in other foods. IDFA asks that any rules and scenarios clearly explain the producer identity in the fact-based scenarios below common in dairy and other food categories:

- Company A in Arizona makes shredded cheese that is packaged in bulk and sold to Company B in California for further processing into a finished frozen food product. Company A is the producer of the packaging sold to Company B.
- Company A in Wisconsin makes dairy powder that is packaged in bulk and shipped to Arkansas Company B. Company B then ships the product to California to Company C where it is used as an ingredient in another food product. As the first distributor of the packaged item into California, Company B is the producer. What if Company C arranges for the shipment into California, does that make Company C the producer?
- Company A makes sour cream and first distributes the product to a California restaurant for use in back-of-house preparing menu items. Company A would be the producer.
- Company A makes a single-serve dairy product and sells the product to Company B. Company B then adds the single-serve dairy product to a larger gift box packaging that is sold at a California store. Company A is the producer for the single-serve dairy product packaging. Company B is the producer for the gift box packaging.

Article 2: Covered Material and Covered Material Categories
Section 18980.2 Categorically Excluded Materials

CalRecycle proposes the following to implement PRC section 42060 (b)(2):

> (2) Packaging necessary to comply with rules, guidance, or other standards issued by the United States Department of Agriculture or the United States Food and Drug Administration. Such rules, guidelines, or other standards include, but are not limited to, standards to prevent microbial contamination or to maintain the safety or structural integrity of packaging under the Food, Drug, and Cosmetic Act; the FDA Food Safety Modernization Act; the Poultry Products Inspection Act; the Federal Meat Inspection Act; the Egg Products Inspection Act; or other applicable federal laws.

Some stakeholders attending the May 27 workshop opposed this language, claiming that it was overbroad and would essentially exclude all packaging. IDFA strongly supports this language as it is consistent with PRC section 42060(b)(2). Furthermore, the categorical exclusion is not overly broad, as it is limited by the term "necessary", such that the provision would narrowly apply where compliance with SB 54 would lead to a violation of federal food safety laws aimed at ensuring the safety of our food supply.[1]

The citations to federal food safety laws in both the statute and in the proposed regulatory language highlight the underlying requirement that food packaging be designed to protect food from microbial and other types of contamination and therefore protect the health of Californians. *Food safety is the number one concern for dairy product companies.* The provision above is self-executing, however, given the opposition at the hearing, and CalRecycle's statements of intent to narrow the provision, IDFA would recommend instead that CalRecyle provide more clarity in guidance on what information would be helpful for the purposes of this categorical exemption.

Section 18980.2.5 Covered Material Category List Updates

IDFA would like to raise concerns regarding the timing and frequency of updates for the Covered Material Cateogry (CMC) List. Gable top (Category ID PF5P) and aseptic (Category ID PF15P) cartons are commonly used for fluid milk, cream, and buttermilk sold in retail stores and to school meal programs, but these cartons are listed as separate categories in the CMC and are currently not deemed as potentially recyclable. In prior comments, both IDFA and the carton industry have asked CalRecycle to merge these two carton categories because the recycling industry recognizes and manages the two categories as a single material category where they are typically collected, sorted, marketed and recycled together[2]. Merging the categories would make California consistent with EPA's waste characterization studies[3], and extended producer responsibility (EPR) laws in both Oregon and Colorado.

IDFA is also concerned that CalRecycle is limiting its own authority to update the CMC List expressly granted in SB 54. PRC section 42061, subdivision (e) states that as part of the CMC process, the "Department shall update the list ***at least*** annually until January 1, 2032." (emphasis added). Thus, the legislature envisioned that CalRecycle would need to update the CMC List more than once a calendar year and there are very good reasons to do so. The market is dynamic, and the process to update the CMC List must be nimbler than what is proposed – which is essentially an April 1 application deadline for the following calendar year's update (see proposal at 18980.2.5(f)(1)).

---

[1] For example, aseptic dairy products such as an aseptic milk cartons must comply with the low acid canned foods regulation, which requires the container to be hermetically sealed in a presterilized container, with a presterilized closure, and the container must be "designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its contents after processing." 21 CFR 113.3. Further, the container is part of the scheduled process filed with FDA, leaving dairy processers with few alternatives and very high costs.

[2] ReMA (formerly ISRI)'s merging of both cartons in to its 52 bale specifications, see https://www.isri.org/news-publications/news-details/2019/12/17/isri-specifications

[3] https://www.epa.gov/sites/default/files/2021-

For the dairy industry, cartons are the primary packaging material used to serve nutritious and wholesome milk to K-12 school children. However, California purchasing requirements mandate that the school milk packaging be recyclable and contracts for future milk purchases that will occur in 18 months are underway, *this month*. Any updates to the CMC List that demonstrate recyclability would be too late for future purchasing agreements, thus we urge CalRecycle to accept additional data and aim to update the CMC List on a quarterly basis. For SB 54 to be a success in increasing recycling and circularity, and to maintain the spirit of the law, we ask CalRecycle to be more flexible and allow quarterly updates to the CMC List. The practical consequences of this timeline for the fluid milk sector and California schools are very real as the school milk would need to be served in plastic containers, which is contrary to the goals of the law.

Section 1890.4.1 End Market Identification

IDFA supports California's proposed regulations, as they provide meaningful standards and require extensive environmental and human health protections for communities surrounding advanced recycling facilities. This approach allows for the innovations of advanced recycling on a case-by-case basis, which is similar to other states implementing EPR programs. For many plastic materials, advanced recycling is the only viable technology for creating post-consumer recycled (PCR) plastic resins free from contaminants. Contamination-free PCR materials are required for dairy products, especially for Grade "A" dairy products that are regulated by the Pasteruized Milk Ordinance[4].

Thank you again for continuing to listen to and take input from stakeholders across the nation and for striving to enact regulations that set the food industry up for success. If CalRecycle has any questions regarding these comments, please reach out to me at dquist@idfa.org.

Respectfully submitted,



Danielle Quist
Vice President, Regulatory Affairs and Counsel

[4] FDA requires that all dairy packaging comply with Appendix J of the Pasteurized Milk Ordinance (PMO), which establishes the Standards for the Fabrication of Single-Service Containers and/or Closures for Milk and/or Milk Products. This means that all resins (virgin or PCR) used for fabrication of dairy product packaging must comply with FDA's Indirect Food Additive regulations at 21 CFR Parts 174-178.