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Submitted via the Public Comment Form: https://calrecycle.commentinput.com/?id=VfBKce95R
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 Permanent Regulations

Dear California Department of Resources Recycling and Recovery,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the California Department of Resources Recycling and Recovery ("Department" or "CalRecycle") to submit written comments during the formal rulemaking comment period for the proposed permanent regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act ("SB 54") released by CalRecycle on August 22, 2025. AMERIPEN respectfully submits these written comments for CalRecycle's consideration when finalizing the proposed regulations.

AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. As the leading voice for packaging policy in the United States, AMERIPEN collaborates with legislators, regulators, and stakeholders to develop science-based, data-driven solutions that enhance the role of packaging in product protection and circularity. We have several member companies with a significant presence in California, as well as many more that import packaging materials and products into the state. The packaging industry supports nearly 156,000 jobs and generates $49 billion in total economic output in California.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values, and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

AMERIPEN greatly appreciates CalRecycle's time and effort in sharing various drafts of the SB 54 regulations with the public after the initial rulemaking period. AMERIPEN also acknowledges that the Department has made significant progress in controlling the administrative costs of the program while preserving the intent of the law to foster a circular economy for packaging, but there are still concerns about some of the remaining contents.

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The power of packaging in balance.

The below written comments and clarifying questions from AMERIPEN speak to the contents of the proposed regulations shared by the Department on August 22, 2025. They are ordered by rule section.

CHAPTER 11.1 PLASTIC POLLUTION PREVENTION AND PACKAGING PRODUCER RESPONSIBILITY

Article 1: Definitions

§ 18980.1. Definitions

Subparagraph (a)(4) provides a definition for "component." Subdivision (A) states that a covered material component is, among other things, "a covered material item that has no physically distinct subparts." "Physically distinct" and "subparts" are undefined terms that will require producers to subjectively interpret their meaning and potential compliance. AMERIPEN would appreciate greater clarity in this terminology and suggests at a minimum modifying the language as follows to further delineate components: "item that **cannot be separated into** ~~has no~~ physically distinct subparts[…]." Relatedly, during a regulatory workshop in 2023, CalRecycle proposed defining "separable," as used in the definition of "plastic component" in SB 54, but that definition was not included in these proposed regulations. AMERIPEN recommends defining "separable" in the regulations as "designed by the producer to be detachable by the consumer upon use." Finally, AMERIPEN appreciated the previous modifications made to subdivision (C), which help clarify the nature of a "detachable component," but asks the Department what the purpose of the word "materials" serves.

Subparagraph (a)(4) also provides two different tests for determining whether a component is a "detachable component." One test is based on design and one is based on detachment by a consumer. The SB 54 25% source reduction mandate requires reduction by weight and by plastic component for covered materials. AMERIPEN would appreciate the Department clarifying whether one or both tests for "detachable component" will be applied to measure source reduction, or whether the Producer Responsibility Organization (PRO) will be given flexibility to determine any application of the tests.

Language was added to subdivision (C) of paragraph (4) of subdivision (a) to specify that a "detachable component" is defined by certain characteristics "regardless of whether the component is discarded attached to the other components." This new language negatively impacts the recyclability determination for components that are made of recyclable material but that are less than two inches by two inches in size. These materials would not currently be considered recyclable on their own due to their size but would be considered recyclable when reattached to the larger recyclable packaging (*e.g.*, a cap replaced on a bottle). The regulations should adhere to the Association of Plastic Recyclers (APR) Design Guides, which require evaluation of attachments in conjunction with primary packaging. They should also ensure a package that would be fully capable of being recycled is considered recyclable. To help ensure that components made of recyclable materials that are reattached to a recyclable packaging do not impact the recyclability of the packaging, AMERIPEN recommends modifying subdivision (a)(4)(C)

as follows: "A 'detachable component' is one that may be completely detached from all other components or material**, is not designed to be reattached before disposal,** and is either of the following:".

By treating "food service ware" as a "good" rather than a type of packaging used in food service environments, per the proposed definition in paragraph (8), the draft rules do not consider that food service ware is intended to be used in conjunction with an underlying product (*i.e.*, food). As a result, the definition appears to exclude the party filling or using the "food service ware" from responsibility, whereas the definition for "packaging" still assigns responsibility to the party using (or filling) the package for its products.

Also, the definition of "food service ware" must be considered in conjunction with the proposed definition of "producer" to recognize additional implications. The proposed definition of "producer" includes the following language: "A good uses covered material if its packaging is covered material or if the good itself is plastic single-use food service ware and thus constitutes covered material." This further removes the connection between the food service operator and the operator's use of "food service ware." Additionally, in so doing, the "producer" definition appears to expand the scope of covered materials to include "packaging-like products" that are supplied or sold to consumers empty; this would create a disparity in the treatment between packaging and plastic food service ware.

Thus, the proposed approach to defining "food service ware" does not allow for a level playing field across all producers and introduces ambiguity as to the obligated party for these covered materials. The intent of SB 54 is to first obligate the brand owner "who manufactures a product that uses covered material"[1] (*e.g.*, food service ware), as that person ultimately specifies its design and service, rather than to obligate the manufacturer of the food service ware (if a different person).

Subdivision (a)(8)(A) identifies types of "food service ware" and states that those types include "other goods typically used with food, provided that such goods are intended or marketed to be used, or are customarily used, in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption." "Other goods typically used with food," "intended," and "customarily used" are very subjective, again forcing producers to make judgement calls on terms whose meaning can vary from person to person. AMERIPEN recommends striking "intended or marketed to be used, or are customarily," as this is not a readily discernible standard and "customarily used" is not something in the control of the producer. Furthermore, striking it would align with the last sentence of the subdivision, which AMERIPEN supports. AMERIPEN does support the addition of clarifying language to this subdivision in this draft, specifically as contained in "[…] act of consuming […] put to such use."

[1] Public Resources Code section 42041(w)(1).

Several of the issues raised above for this definition may be addressed by instead defining "food service ware" as follows:

> (8) "Food service ware" means ~~the goods~~ **covered material** identified in subparagraphs (A) and (B) **that are added at the point of sale by food service, or other service entities, to serve, store, handle, protect, or market food and facilitate the consumption of prepared food.** Plastic single-use food service ware […]
>
> (A) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, and other ~~goods~~**items** typically used with food, provided that such ~~goods~~ **covered materials** are ~~intended or marketed to be~~ used~~, or are customarily used,~~ in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption."

Subparagraph (a)(15) defines "plastic," in reference to a component, to mean "the component or object contains or is made partially or entirely of plastic[…]." The continued use of the phrase "made partially" in the existing statutory definition and the proposed regulation is very subjective and open to divergent interpretations. The proposed definition would encompass all multi-material packaging components made of any amount of plastic (no matter how little). This is inconsistent with how the recycling industry classifies, treats, and manages such materials. For some of these materials, like polycoated paperboard, processing facilities recognize that a small amount of plastic will come along with the primary material and is not a barrier to recycling. In addition, the statutory intent is unlikely to be met if a material like this were treated as a plastic and subject to the source reduction requirements, as reductions to the non-plastic portion would appear as a plastic reduction. Moreover, the sentence at the end of this subparagraph reinforces that it is possible to distinguish the non-plastic content of a component from the plastic content. Absent restricting the definition to only a single piece of covered material made entirely of plastic, AMERIPEN strongly encourages CalRecycle to specify in a revised definition that "made partially" means the component is comprised of a specific amount of plastic (*e.g.*, at least 20% by weight).

AMERIPEN requests the addition of clarifying language to the "producer" definition in subparagraph (a)(17) providing that, "**A manufacturer of a component is not considered a producer for that component solely for reason of manufacturing that component.**" This will avoid misconstruing the definition of "producer" under SB 54 and these proposed rules as applying to a manufacturer of packaging components whose products are subsequently used in packaging by another entity that is the appropriate "producer" of covered material. Additionally, neither SB 54 nor the proposed regulations provide explicit guidance regarding producer responsibility for transactions involving covered material over the internet (*i.e.*, "e-commerce"). This language would help producers, e-commerce platforms, and shippers clearly understand their respective obligations under SB 54. Other states with packaging extended producer responsibility (EPR) requirements provide such guidance, whether through statutory language or via rulemaking. AMERIPEN suggests that the Department consult the framework in

paragraph (b) of the "producer" definition implemented in Colorado's adopted EPR regulations[2] as a potential source for clarifying e-commerce "producer" duties.

AMERIPEN appreciates the addition of the sentence in subparagraph (a)(17)(B) specifying that empty packaging materials are not covered material, as it is a logical clarification. However, SB 54's definition of "covered material" encompasses plastic food service ware, as opposed to all food service ware. Furthermore, for reasons stated above regarding the definition of "food service ware," the sentence treating packaging and food service ware differently should be removed. As such, AMERIPEN recommends amending subdivision (a)(17)(B) to add corresponding clarification for food service ware as follows: "[…] ~~A good uses covered material if its packaging is covered material or if the good itself is plastic single-use food service ware and thus constitutes covered material.~~ Empty packaging materials not yet used by a good are not 'single-use packaging' or otherwise 'covered material' under the Act, **and non-plastic food service ware that is not packaging is not 'covered material' under the Act,** such that a person is not a producer merely because they manufacture, sell, offer for sale, or distribute such materials."

AMERIPEN appreciated the addition of subdivision (a)(17)(D), which clarifies that the scope of packaging that is considered "covered material" applies only to packaging associated with a product before the point of sale or distribution and before initial physical display.

AMERIPEN greatly appreciated the addition of language in subdivision (a)(17)(F)(i) excluding products and the covered materials they use that merely pass through California without reaching a user or disposal in California.

Subdivision (a)(17)(F)(ii) provides that the "mere transportation of products (e.g., parcel or freight shipping) on behalf of another person shall be deemed conducted by that person, not the transporter." While this provides clarity in some respects, it prompts further confusion in various scenarios. For example, who would be the producer in a situation where a brand owner manufactures a product but ships it into California at the direction of a retailer? At the very least, AMERIPEN recommends replacing "person" with "producer" in this subdivision to provide more clarity that a producer's obligation does not transfer based on transportation.

AMERIPEN greatly appreciates the deletion of the definitions of "sufficiently durable," "washable," and "sufficiently washable" in subdivisions (a)(27)(C) and (a)(27)(D), as they were cumbersome and would stifle development of reusable and refillable materials.

[2] 6 Code of Colorado Regulations (CCR) 1007-2 Part 1, Section 18.1.6

§ 18980.1.1. Producer Identification

Paragraph (a) outlines when a person may be considered "in the state" for purposes of SB 54. While this language is helpful in elucidating how to understand this term as it is used in statute, some uncertainty remains. AMERIPEN seeks the Department's determination as to whether a producer would be considered as consenting to being regarded as "in the state" merely for registering with a PRO.

AMERIPEN reiterates its appreciation for the Department's efforts to consolidate and clarify criteria for identifying obligated producers under this section. That includes some of the changes made in recent drafts of the rules, such as providing dedicated hierarchies for packaging and for plastic food service ware without substantively changing the order of obligation. However, complications still remain in some areas and further refinement is merited. One specific example is subdivision (e): it establishes standards for designating which brands or trademarks are obligated when multiple ones are present, including by pointing to the brand or trademark "most prominently used." "Most prominently used" is an inherently subjective standard that may create differing interpretations and disputes among parties. As such, AMERIPEN recommends allowing a PRO to develop uniform guidance for determining brand and trademark prominence for products under its program.

AMERIPEN supports the flexibility afforded in subdivision (e)(5), which allows producers to voluntarily agree on designating a brand or trademark on a good for which they both have responsibility.

Regarding subdivision (f)(1), AMERIPEN assumes and is seeking clarifying language under this subdivision to confirm that if a franchisee adds transport or tertiary packaging to covered material items within the supply chain, that franchisee would be the responsible producer for those added covered material items.

Subdivision (f)(2) provides that, "If there is no brand owner or licensee in the state, the person who first sells or distributes the good in the state is the producer of all covered material items, including any covered material items added by such person, used by the good at the time of such sale or distribution." This corresponds at least partially to the third tier of the statutory "producer" definition in subdivision (w)(3) of Public Resources Code (PRC) section 42041. It is unclear how these provisions will be implemented in certain scenarios. AMERIPEN believes that the default obligated producer would be the brand owner under subdivisions (c) and (d) of this section, and AMERIPEN seeks additional clarifying language that private label manufacturers that reside in the state would not be the producer if the product's brand owner resides outside the state. For example, a product manufacturer in California may create a private label product at the direction of and under the brand of a retailer not based in California; the manufacturer then sells/distributes that product to the retailer to be sold to consumers at one of its retail locations in California. In this example, AMERIPEN believes the responsible producer would be the brand owner that resides outside the state but directs the production and use of covered material items.

Article 2: Covered Material and Covered Material Categories

§ Section 18980.2. Categorically Excluded Materials

Subparagraph (a)(2) establishes a process for producers to determine "if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration" for food or agricultural commodity packaging. While this process may prove time- and resource-intensive, AMERIPEN is grateful that this subparagraph makes non-exhaustive reference to federal laws included in SB 54, provides an appropriate window for compliance for materials determined not eligible, and includes trade secret protections.

Subparagraph (a)(6) specifies that excluded medical products include certain drugs that do not require a prescription. In order to clarify that either of the conditions from subparagraphs (A) or (B) must be met to qualify, AMERIPEN recommends amending the subparagraph as follows: "[…] that do not require a prescription and **that do** satisfy at least one of the following criteria:".

§ 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware

As a general note, AMERIPEN greatly appreciates the progress the Department previously made in simplifying the complexity and length of these rules governing reuse and refill. This is crucial for producers to be able to collectively increase their use of reusable and refillable materials as expected, particularly given the nascent state of this sector. AMERIPEN cautions against reinstating much of the struck provisions or imposing significant new requirements, at least for the early years of the SB 54 program, as that will inhibit growth of these formats.

Subparagraph (a)(3)(B) requires packaging or food service ware items to be reused "for the same good without being recovered from the consumers or returned into the supply chain" to be considered "reused or refilled by a consumer." Restricting consumer reuse to the exact "same" good is unnecessarily restrictive: reusable covered material can be used for similar goods that may differ in minor ways, such as colors, flavors, or scents. AMERIPEN therefore recommends amending this provision as follows: "[…] for the same **or a similar** good […]."

AMERIPEN supports the deletion of what was subdivision (a)(4), which would have established requirements for packaging or food service ware to be considered "explicitly designed and marketed to be utilized multiple times," including prescriptive labeling standards and advertising restrictions. The requirements were one-size-fits-all and did not accommodate the wide diversity of products. For example, requiring English labeling for reuse and refill instructions may limit the ability to import products. The requirements also may have disqualified reuse and refill pilot projects like the one

conducted recently in Petaluma, California, which provide helpful real-world testing of consumer instructions.

Subdivisions (a)(4)(A) and (a)(5)(A) require a convenience standard for return locations that is either the same as the location of obtainment or delivery or that is within one mile of that location. The one-mile standard is impractical, particularly for communities that are rural or geographically restricted. AMERIPEN recommends allowing the PRO or Department to waive this requirement for communities where the standard is impractical.

AMERIPEN also supports the deletion of the prior version of subdivision (a)(5), which would have required packaging to be "sufficiently durable to remain usable when used multiple times over at least three years following initial use" to qualify as "designed for durability to function properly in its original conditions for multiple uses." It could have been too restrictive and ended up prohibiting reusable materials that may be used very frequently but over a duration of less than three years, which would be counterintuitive.

AMERIPEN supports the deletion of what was subdivisions (a)(7)(A) and (a)(9)(A) in the prior draft, which would have required returning an item to the producer to "not require more time[…]than obtaining a new item." This was far too restrictive, as a consumer can obtain a new item online easier than going back to the return/refill site.

AMERIPEN supports the changes made to what used to be subdivisions (a)(7)(B) and (a)(9)(C) to limit the provisions to remote means and to allow for alternative return options. This avoids encumbering future technologies and methods of reuse and refill (such as a third-party collection system that can collect packaging provided by individual companies). For similar reasons, AMERIPEN supports the deletion of what was subdivision (a)(7)(D) in the prior draft.

AMERIPEN is grateful for the deletion of portions of what was subdivision (a)(8)(A) in the prior draft, which would have established requirements for how often items must, on average, be used or filled by the producer before disposal. AMERIPEN was concerned that the approach in the subdivision would have unfairly penalized producers that switched from a non-plastic single use product to a reusable product with a slight amount of plastic; even though such a reusable product will facilitate greater circularity and environmental benefits, it might have been disqualified due to the presence of a slight amount of plastic. AMERIPEN also questioned what will happen if there is no "single-use version" of an item, compared to its reusable or refillable counterpart, as referenced in the former subdivision. Furthermore, the provisions in what was subdivision (a)(8)(B) would have unfairly deflated the magnitude of source reduction by arbitrarily preferring for comparison single-use products with a comparable plastic composition; such products may not be the most direct substitute for the reusable/refillable option and so may not be appropriate for comparison. Finally, this provision would have become more complicated when trying to understand how the source reduction requirements and integration of postconsumer recycled content would have interacted with it.

§ 18980.2.2. Exclusion of Certain Types of Packaging

Subparagraph (a) provides that the Department may request producers to substantiate their claims of being exempt for materials used for long-term protection or storage. This is a supportable approach compared to a prior version, which would have used an application process, as it will save resources for the Department, producers, and consumers. However, AMERIPEN objects to the language in subdivision (a)(1) requiring an exempted good to be "one that is not ingested, irreversibly used, destroyed, or expended through its ordinary used." This approach is unnecessary, as the relevant test for eligibility under the long-term storage materials exemption is whether the packaging and associated product have a lifespan of at least five years; the product's status as diminishable is immaterial. The Department exceeded what is provided for in the plain language of SB 54 (the five-year lifespan requirement) by imposing this additional requirement that is neither specified in law nor necessary to implement the law. Therefore, AMERIPEN requests the Department to strike subdivision (a)(1).

AMERIPEN appreciates the recent revisions made in subparagraph (b)(1), especially to add clarity in subdivision (b)(1)(B)(ii), which will help producers more readily identify when material is an "independent plastic component."

Subdivision (b)(1)(B) introduces a definition of "independent plastic component," to make specific that term as it is used in subdivision (s)(4)(A) of PRC section 42041. SB 54 provides that an "independent plastic component" is ineligible to be treated as "[a]n element of the packaging or food service ware with a de minimis weight or volume" that would be excluded from the definition of "packaging." The statute provides little direction as to what "independent plastic component" means, but AMERIPEN believes the approach taken in the regulations is flawed. As the purpose of the exclusion is to accommodate plastic materials that do not complicate a good's recyclability, the definition should be drafted accordingly (rather than assessing detachability and continuity). AMERIPEN recommends rewriting the definition to read as follows: "'Independent plastic component' is a packaging component, or a group of components, that wholly or partially comprises plastic and that is not recyclable."

Subparagraph (b)(3) establishes a new process for a PRO or Independent Producer to request CalRecycle "deem certain components or groups of components to be of de minimis weight or volume." AMERIPEN appreciates this new provision that will increase certainty in this area of the law that is difficult to assess. However, AMERIPEN requests two amendments to improve it. First, individual producers also should be authorized to make requests under this mechanism to avoid tying up PRO time and resources processing requests. Second, AMERIPEN requests explicit clarification that use of this mechanism is not a mandatory prerequisite for claiming a material is of de minimis weight or volume; AMERIPEN's understanding from the informal regulatory workshop on May 27, 2025, was that it is an advisable but optional approach, and therefore AMERIPEN seeks clarification accordingly.

§ 18980.2.3. Exemptions for Specific Material with Demonstrated Recycling Rates

Subdivision (b)(2)(B) prohibits packaging or food service ware items from being "commingled with unsorted material collected by curbside programs." However, this does not adhere to the language in PRC section 42041(e)(2)(H)(i)(II) and may preclude them from being sent for additional processing and secondary sorting before transport to a responsible end market. AMERIPEN recommends amending this section to allow such activities by instead requiring that the information demonstrate conformance with PRC section 42041(e)(2)(H)(i)(II).

Paragraph (c) specifies that applications under this section are public documents unless exemptions apply or the Department allows for treatment as a trade secret. AMERIPEN is deeply concerned about the risk of proprietary and sensitive market information pertaining to end markets being publicly released after being shared with the Department, as it may negatively affect the competitiveness of the market. AMERIPEN requests the addition of an option for a producer to submit their data to a third party approved by a PRO that will anonymize the data or certify that the producer is compliant with the responsible end market obligations.

§ 18980.2.4. Exemptions for Certain Covered Materials

Paragraphs (a) and (b) do not allow a participating producer to submit an application to exempt its covered material under this section, requiring the request to instead come from the PRO. AMERIPEN requests restoration of the authority for a participant producer to make exemption requests, as there is no guarantee that a PRO will be able to apply on the producer's behalf.

Under paragraph (a), the regulations provide only a limited explicit exemption from SB 54, specifically pertaining to PRC section 42050. However, subdivisions (a)(3) and (a)(4) of PRC section 42060 allow CalRecycle to grant exemptions from the entirety of SB 54. Therefore, AMERIPEN requests replacement of language from a prior version of the regulations stating exemptions apply to "the requirements of the Act and this chapter."

The "practical necessity" of a covered material has no bearing on whether it has "unique challenges" complying with SB 54 or health or safety reasons that justify an exemption. The Department also should not be the arbiter of the "practical necessity" of any covered material introduced into interstate commerce. Therefore, AMERIPEN recommends deletion of subparagraph (c)(4)(A)(iii).

Subparagraph (c)(4)(A)(iv) requires a party seeking an exemption based on the unique challenges of a material to identify "[p]otential alternatives to the covered material and a description of why they are infeasible or unreasonable," as specified. This analysis is not required or even contemplated under SB 54 and is irrelevant to determining whether a certain material "presents unique challenges in complying with" SB 54. The question is whether the given material itself is associated with "unique challenges," not

whether there are alternatives. At a minimum, AMERIPEN recommends striking subparagraph (c)(4)(A)(iv).

Subparagraph (f)(3) requires that for an exemption for health and safety reasons or because a material is unsafe to recycle, the Department must establish both that:

> "(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."

However, "risks of significant effects on the environment" and whether an exemption will "make it more difficult for any other producer to satisfy the requirements of section 42050 of the Public Resources Code" do not directly factor into the statutory grounds for this exemption. As such, subparagraph (f)(3) should be revised to read as follows: "An exemption request based on section 42060(a)(4) of the Public Resources Code shall be approved if the application clearly and convincingly establishes compliance with the Act is not possible without increasing overall risks to health or safety compared to the risks posed by exempting the packaging or food service ware or because it is unsafe to recycle the packaging or food service ware."

Subparagraph (g)(1) now provides that exemptions under this section last for two years by default instead of one year, except in certain circumstances. AMERIPEN supports this change because a one-year exemption period would necessitate a significant amount of producer and Department resources, respectively, to reapply for and to review reapplications for the exemption. However, the subparagraph was also modified to cap the Department's authority to extend exemptions to five years; AMERIPEN requests removal of this clause because it is unnecessarily limiting given that the Department has oversight authority. AMERIPEN instead requests that this paragraph be modified to allow applicants to request an exemption duration longer than two years with a description of justification for doing so, and provide that CalRecycle should consider such a request and, if the longer exemption duration is not granted, provide a detailed explanation as to why. Finally, to afford the Department and PRO ample time to review and process requests, AMERIPEN encourages the Department to provide guidance regarding the forthcoming exemption application process as soon as possible so the public with enough time to understand and prepare for its implementation.

§ 18980.2.5. Covered Material Category List Updates

A prior draft of the regulations deleted language in paragraph (a) specifying what portions of the Covered Material Category (CMC) List should be reviewed and, "if necessary," updated. Furthermore, a prior draft

added language to the beginning of paragraph (b) and deleted the sentence stating, "For example, the Department shall update the list if the list, as updated, would more accurately or completely reflect how distinct material types and forms are collected or processed separately or would accurately account for novel material types and forms." AMERIPEN is concerned that removal of this language will restrict the Department's authority to make updates to the CMC List when there is significant new information about recycling that would substantively modify characterizations in the List. The Department should make timely updates to the recycling and composting designations in the CMC List to reflect changing and, under SB 54, improving recycling conditions. Furthermore, PRC section 42355.51(d)(1)(B)(iii) authorizes CalRecycle to "publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms." AMERIPEN therefore requests the Department undo the changes previously made in paragraphs (a) and (b) of this section in the December 2024 draft. Alternatively for paragraph (b), AMERIPEN recommends the Department add a final sentence stating, "At a minimum, the Department shall update the list twice annually if new information and changed circumstances warrant it."

§ 18980.2.6. Covered Material Category List Recommendations

AMERIPEN supports the language in paragraph (a) clarifying that entities may recommend changes to the CMC List in alignment with the timing for submissions in paragraph (f) of section 18980.2.5. To further ensure that CMC List updates are considered in a cohesive manner, AMERIPEN recommends requiring the Department to consider any recyclability determination information timely submitted pursuant to paragraph (f) of section 18980.2.5 when considering any suggested updates for a CMC List update for the same material pursuant to paragraph (a) of section 18980.2.6. AMERIPEN also recommends allowing industry associations, trade associations, and groups of producers to recommend changes to the CMC List.

Article 3: Evaluations of Covered Material and Covered Material Categories

§ 18980.3. Recyclability

Paragraph (d) requires a producer to supply the Department, upon request, with specified lab testing to verify compliance with chemical ingredient requirements. AMERIPEN requests that producers be given the alternative option to comply with this via provision of material safety data sheets or certificates of compliance from their suppliers, as this will demand fewer resources while utilizing readily available information. This would be like requirements in the rules for Maine's packaging stewardship law.[3]

For subparagraph (e)(3), AMERIPEN notes recovery rates will vary for items based on consumer habits and it is unclear if the timing contemplated in this subparagraph will sufficiently capture reuse and refill.

[3] Chapter 428: Stewardship Program for Packaging rules, Section 9(B)(7).

Producers are unlikely to have data on "the average time between the items' sale or distribution and collection," and it will be difficult to determine a reliable figure for each given item. Furthermore, food service ware may be retained for longer than single-use packaging. AMERIPEN suggests reconsideration of whether it is necessary to impose the one-year timeframes proposed in this subparagraph, and suggests instead deferring to a PRO or Independent Producer to propose within their program plan a calculation methodology for paragraph (5) of subdivision (d) of PRC section 42355.51.

Paragraph (f) contains a discrepancy in the level of scrutiny between producers participating in a PRO and Independent Producers required to verify continuing eligibility for recyclability pursuant to PRC sections 42355.51(d)(4) and section 42355.51(d)(5). The setting of a specific auditing frequency of annually and specifying verification duties for only the PRO exacerbates this issue. For consistency and equitability, AMERIPEN requests that both producers participating in a PRO and Independent Producers be subject to the same standard, whether it is the one provided subparagraph (f)(1)(C) or the one provided in subparagraph (f)(2)(B).

§ 18980.3.1. Recyclability of Certain Covered Material Categories Identified by the Department

While there previously has been advisement that subdivision (a)(3)(B) of PRC section 42061 places a restriction on timing for the use of the "trending on-ramp," AMERIPEN notes that this interpretation is an unnecessarily restrictive reading of SB 54. Subdivision (a)(3)(B) of PRC section 42061 allows the Department to utilize the on-ramp "when updating" the MCS, as opposed to when the MCS "is updated." The Department simply needs to be in the act of making edits to the MCS to utilize the on-ramp, and statute does not restrict when that work may be undertaken (rather, it specifies when the update is "issued"). AMERIPEN therefore recommends beginning update work as soon as possible to ensure the timely usage of the "trending on-ramp" to reflect up-to-date recyclability progress.

Paragraph (b) establishes criteria for a material to qualify for the "trending on-ramp," as provided in PRC section 42061(a)(3)(B). For a material to be eligible, there must be a demonstrated "increase in the collection and sorting" of the material that "is more likely than not to continue" and "is more likely than not to result in the covered material category satisfying the requirements of paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code before the next mandatory update to the material characterization study." In essence, this paragraph requires a CMC to demonstrate likelihood to fully satisfy the recyclability provisions of SB 343 before the next material characterization study (MCS) update (*i.e.*, within five years).

This time limit imposed in subparagraph (b)(3) is not required anywhere under SB 54 and is arbitrarily short. The law refers to "materials that are trending toward meeting" certain requirements of SB 343, without any conditions placed on what "trending" entails. AMERIPEN understands it may be desirable to provide specificity to implement this provision and acknowledges the Department's rationale provided in the Initial Statement of Reasons regarding "the express, non-permanent function of the

exemption (to apply to materials expected to fully comply with the Act in the future)." However, the statute can be satisfied without imposing this unjustified expectation for full compliance within five years. It is critical that the "trending on-ramp" be applied to maximize the potential for materials to achieve full "recyclability" under SB 343, but an arbitrary timeline undermines this.

The intent of subparagraph (b)(3) can be achieved by simply requiring the Department to determine the increase will eventually result in satisfaction of PRC section 42355.51(d)(2). As such, AMERIPEN recommends deleting " before the next mandatory update to the material characterization study" from this subparagraph. AMERIPEN also recommends making a corresponding change in subparagraph (c)(1).

§ 18980.3.2. Methodology for Recycling Rate Determination

AMERIPEN requests clarification in paragraph (b) that data for recycling of a given covered material can be combined from curbside and non-curbside or alternative collection programs, as some materials may utilize both systems.

Subdivision (b)(2)(A) should be amended as follows to reflect the definition of "recycle" in SB 54: "[…]for the creation of new**, reused,** or reconstituted products."

Local jurisdictions can be exempted from managing covered material categories on a case-by-case basis. To account for this, AMERIPEN requests addition of a subparagraph (4) to paragraph (d) that would require the recycling rate denominator to be adjusted down accordingly based on any jurisdictions that receive exemptions from managing covered material categories.

AMERIPEN supports the phase-in approach for new CMCs under subparagraph (f) but suggests extending the period to 18 months for the first several years of the program as producers ramp up their reporting capabilities.

§ 18980.3.3. Eligibility for Being Labeled "Compostable"

Paragraph (e) states "Satisfying the legal requirements for being labeled 'home compostable' pursuant to sections 42355 through 42357.5 of the Public Resources Code or any other law shall not be construed to mean that any covered material is eligible for being labeled 'compostable' for purposes of section 42050(b)." AMERIPEN is disappointed by the addition of this paragraph, as it will hinder the rollout and support for an emerging segment of the organics market. AMERIPEN encourages the Department to strike this paragraph and promote a pathway for these materials to qualify as eligible to be labeled "compostable" under SB 54.

§ 18980.3.4. Independent Third-Party Validation for Postconsumer Recycled Content

AMERIPEN is grateful for the inclusion of the last sentence in subdivision (b)(4)(B)(ii), which will help avoid an interpretation that the alternative third-party validation entity would be prohibited from approval simply for purchasing a product from a producer subject to the validation requirement.

Article 4: Responsible End Markets

§ 18980.4. Responsible End Market Determination Criteria

Subdivision (a)(3)(A) requires a responsible end market to send "incompatible materials that can be further processed and recycled[…] to entities that are authorized to further process and recycle the material." Sending such materials for further processing and recycling is not necessarily a cost-efficient or environmentally preferable option, and thus may raise costs or deter end markets from taking part in California's EPR system. AMERIPEN recommends avoiding application of this mandate in cases that would be counterproductive. This may be achieved by amending the clause as follows: "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**, unless the end market determines that doing so would not be cost-effective or would create more impacts to the environment than an alternative**."

Subdivision (a)(4)(A)(i) excludes material "not sent to a responsible end market for further processing" from the denominator in an average recycling yield calculation. AMERIPEN supports this new language, as it will more accurately reflect the final actual yield proportion.

Subparagraph (a)(4)(B) requires an entity to ensure covered material "intentionally included in the process used to generate a recycled organic product must fully biologically decompose" for the entity to qualify as a responsible end market. The rules now limit this condition only to covered material "partially or wholly comprising plastic." It should still be noted that it is not guaranteed that any product, whether it is food waste, vegetation, or a piece of compostable packaging, will fully convert in every compost cycle. Additionally, non-plastic covered material does not necessarily need to fully decompose, and composters can often have remaining pieces of food and yard waste, even after long composting cycles. Moreover, the addition of subparagraph (a)(4)(C) is helpful for non-plastic compostable materials but creates a discrepancy in treatment compared to plastic compostable materials. Finally, end markets are unlikely to be able to distinguish between plastic and non-plastic material that has already disintegrated. AMERIPEN recommends subjecting all covered material intended to generate a recycled organic product be subject to the same standard as provided in subdivision (a)(4)(C). AMERIPEN also suggests that using a term like "disintegrate" rather than "biologically decompose" may be more appropriate, as disintegration is measure by ASTM standards.

AMERIPEN greatly appreciates the sentence in paragraph (b) added in a recent draft that allows an entity to qualify as an end market if it "produces and uses" recycled organic product or recycled content feedstock rather than selling or transferring it. AMERIPEN still also seeks guidance as to what qualifies as "quality standards necessary," as used in this section.

§ 18980.4.1. End Market Identification

Subdivision (a)(3) requires a PRO or Independent Producer to describe how it will obtain cooperation with an end market or intermediate supply chain entity (ISCE) that is not responsible. While this planning is somewhat helpful, AMERIPEN remains concerned that it will be difficult to obtain documentation from end markets and ISCEs to confirm they are responsible. AMERIPEN continues to request that end markets and ISCEs be obligated to provide relevant records to the PRO or Independent Producer to satisfy this need, consistent with what section 18980.4(a)(2)(G) provides for responsible end market entities. This will help ensure PROs and Independent Producers can comply with this requirement for information that they do not have in their possession.

Section (c) refers to "paragraphs (4) and (6) of subdivision (d) of section 18980.4," but there is no subdivision (d) in that section. AMERIPEN notes this cross-reference should be corrected, presumably to refer to section 18980.4.1 instead.

Subparagraph (d)(1)(A) no longer contains a requirement to compare novel recycling technologies against mechanical recycling technologies. AMERIPEN greatly appreciates this change, as the merits of new recycling technologies should not be based on statutory criteria rather than weighed in relation to others.

§ 18980.4.2. End Market Compliance Audits and Verification

Paragraph (c) requires a PRO or Independent Producer to "annually verify that each end market it uses satisfies the requirements to be a responsible end market[…]." This verification frequency will create substantial recurring costs and compliance burdens for producers. There is little realistic need for repeating verification so often, especially given that end markets will be audited and investigated annually pursuant to this section. AMERIPEN continues to recommend the Department instead make this requirement biennial at minimum and reconsider the frequency in subsequent rulemakings.

A PRO or Independent Producer may not have complete access to or knowledge of certain information regarding an end market, including complaints made against the end market if made to a different entity. Subparagraph (a)(1) of a prior version of section 18980.4.2 acknowledged this limit, but only as it pertains to compliance failures. AMERIPEN continues to recommend making this exception more general by now by amending paragraph (c) as follows: "[…]shall include, but not necessarily be limited to the following**, if in the possession of the PRO or independent producer**:."

§ 18980.4.3. End Market Development

Paragraph (b) requires a PRO or Independent Producer to conduct a study for covered material that does not have an end market, unless the PRO or Independent Producer opts to phase out the material. Subparagraph (b)(3) requires the PRO or Independent Producer to invest in alternatives for the material proposed to be phased out. To avoid unneeded expenditures when developing and implementing alternatives would duplicate existing efforts, AMERIPEN recommends adding the following caveat immediately before the final sentence of subparagraph (b)(3): "This investment requirement does not apply if additional investment in alternatives is not necessary."

Article 5: Requirements for Producers

§ 18980.5. Producer Compliance

AMERIPEN appreciates the final sentence in paragraph (b) clarifying that a producer is not required to participate in a PRO plan or develop an Independent Producer plan for covered material not sold, offered for sale, imported, or distributed in California.

Paragraph (c) previously required participant producers that leave a PRO to apply to become an Independent Producer within six months. With this language deleted in a prior draft, AMERIPEN seeks clarification about the expected deadline for producers in this situation.

§ 18980.5.2. Exemptions for Small Producers

AMERIPEN appreciates the extension of the exemption duration for small producers from one year to two years. This will lower administrative costs for producers and the Department while also providing more market stability for producers with limited resources.

Article 6: Requirements for the Producer Responsibility Organization

§ 18980.6.5. Annual Reports

AMERIPEN supports the change made in this section and elsewhere in the regulations to split the annual report into two phases. This will allow more time for the PRO to process data reporting and prepare annual fee rates, in better synchronization with other states' EPR programs.

§ 18980.6.7. Eco-modulated Fee and Fee Schedule

Paragraph (g) requires a PRO to "develop a formula to calculate each participant's market share and corresponding surcharge assessment," and requires the formula to "be based on the number of plastic components and weight of plastic covered material a producer offers for sale, sells, distributes, or

imports in or into the state." However, PRC section 42064(f)(1) requires the environmental mitigation surcharge to be based on each producer's "market share of plastic covered material, accounting for both number of plastic components and weight." AMERIPEN recommends addition of the "market share" factor into this paragraph to ensure alignment with SB 54. AMERIPEN also appreciates the language accounting for Independent Producers' share of the annual environmental mitigation surcharge.

Paragraph (h) lists descriptions in a certain publication ("design guide") that would result in a specific element being considered "to make recycling more difficult" under the proposed rules. One such description is "requires test results." However, the fact that the publication states that an element "requires test results" is different from a determination that it is detrimental; rather, as its title indicates, it is an indication that further investigation is needed to determine whether the element is detrimental. An element may be found to be "preferred" after testing and therefore should not be considered detrimental. Thus, AMERIPEN continues to request the Department amend paragraph (g) as follows: "…or 'requires test results~~.~~' **unless the element passes the required test.**" Additionally, this "more difficult" standard should not apply to products that are managed through composting, as that process is subject to different requirements than standard recycling.

Paragraph (i) requires a PRO to "charge a malus fee to producers who use covered material that contains a chemical listed on" the Proposition 65 List. Under this proposal, a malus fee would be triggered for the mere presence of any chemical on the list irrespective of its hazardous status. However, Proposition 65 is more nuanced. Equating presence with hazard is unscientific and will result in a sprawling list of chemicals that unnecessarily trigger a malus, thereby creating unwarranted costs. Moreover, listed chemicals often have "safer harbor levels," including No Significant Risk Levels (NSRLs) and Maximum Allowable Dose Levels (MADLs). According to the California Office of Environmental Health Hazard Assessment (OEHHA), "Exposure levels and discharges to drinking water sources that are below the safe harbor levels are exempt from the requirements of Proposition 65." Therefore, paragraph (i) should be amended to focus on the presence of hazardous materials identified by the state rather than using Proposition 65. Should CalRecycle instead maintain an approach relying on Proposition 65, a malus fee should apply only in instances where the presence of a Proposition 65 List chemical exceeds an established safe harbor level. Such an approach would be more consistent with PRC section 42053(e)(4), which references "hazardous material as identified by" OEHHA, since chemicals with safe harbor levels should not be considered hazardous if they do not exceed the level identified by OEHHA.

§ 18980.6.8. Recordkeeping and Reporting Requirements

Subdivision (a)(1)(D) was added in a previous draft to require a PRO to maintain annual records of the total weight of material disposed for each CMC, disaggregated by participant producer. This is a very granular level of information that will be nearly impossible to track down for each material and for each producer. AMERIPEN recommends deletion of this subdivision, just as subdivision (a)(5) was deleted in

a prior draft, and AMERIPEN recommends deletion of subdivision (a)(2)(C) for similar reasons. AMERIPEN also recommends corresponding deletion of subdivision (a)(1)(D) and subdivision (a)(2)(C) in section 18980.7.7 to make the same changes for Independent Producers, and deletion of related language in section 18980.10.2..

Article 8: Producer Responsibility Plan Requirements

§ 18980.8. Producer Responsibility Plan

Paragraph (d) previously authorized but now requires a program plan to include various education and promotion efforts. While the listed elements are generally reasonable, there may be cases where such elements are unnecessary or are already provided and therefore these actions would be duplicative. AMERIPEN recommends reverting this paragraph to be discretionary, to afford the PRO or Independent Producer more discretion in designing its education and outreach work.

AMERIPEN supports several of the changes made in paragraph (g), including the following: clarifying that producer funding of costs can take forms other than reimbursement; explicitly providing that pre-2023 costs are not covered; allowing for performance-based compensation approaches; and preventing duplicative compensation for the same activity. AMERIPEN supports these changes that together allow for a clearer and more workable system for producers, local jurisdictions, and recycling service providers.

Paragraph (h) requires a program plan to include a cost dispute resolution process, and subparagraph (h)(3) requires the process to "avoid unnecessary burden on local jurisdictions and recycling service providers." It is unclear what would qualify as an "unnecessary burden," so AMERIPEN recommends clarification that the phrase refers to "necessitating a significant amount of new financial or technical resources."

Former § 18980.8.3. Source Reduction Adjustments

The 2025 informal draft rules removed Section 18980.8.3, which previously would have specified procedures for allowing a source reduction plan to utilize adjustment factors and methods for fluctuations in the economic conditions and the number of producers participating in a PRO plan. It is unclear whether adjustments can be made without this language, even though SB 54 does not prohibit them. The previous language required implementation of these factors and methods in an unbiased manner and with Department oversight. Allowing such adjustments is critical to the function of packaged consumer goods and food service ware. Without adjustments, producers will have to work against an absolute baseline. It is not sufficient to argue that some producers can be assigned a larger obligation to source reduce to address this issue, since there is a practical limit to how much source reduction can be achieved even in aggregate. Additionally, population and market conditions can outstrip that limit in a way that cannot be mitigated. Because the baseline would be static and cannot reflect population

changes or changes in the number of producers, producers would have to pull off the shelves products that have reached their maximum feasible source reduction and that do not have feasible alternatives; this in turn limits available consumer options, creates sunk costs, results in product losses, and generates unnecessary environmental impact. Additionally, in the event of a decline in population or producers, it will result in more plastic available to use in plastic than intended under the law.

Finally, the source reduction baseline also explicitly should be able to be adjusted and normalized for business growth. Sales numbers can fluctuate with population and producer changes but also can fluctuate for any number of other reasons (*e.g.*, shifts in consumer preferences, e-commerce trends, and advances in technology). Without this adjustment, growing businesses could be forced to bear a disproportionate share of source reduction burden solely by virtue of their growth. As a result, it is important to consider sales growth when setting adjustment factors.

Therefore, AMERIPEN urges the Department to restore Section 18980.8.3 as contained in the December 2024 draft of the rules and to explicitly include changes in sales volume as grounds for adjustment as part of paragraph (c).

Article 9: Source Reduction Baseline Report and Annual Reports

§ 18980.9.1. Annual Reports

PRC section 42057(a) establishes phased-in source reduction requirements that take effect on January 1 of 2027, 2030, and 2032. However, there is no clarity in the statute or regulations as to how to measure compliance with these requirements. To afford appropriate time to implement these requirements and not begin counting compliance *before* they take effect, AMERIPEN recommends adding language specifying that compliance is measured in the one-year period covering the calendar year for each of the three phase-in dates. This will comply with the letter of the law and help prevent unnecessary removal of covered material from the market in the near future. Specifically, subdivision (d)(2)(A) can be amended as follows: "Percentage of reduction across all participant producers **achieved during the applicable calendar year 2027, 2030, or 2032, respectively, based on producer source reduction reporting pertaining to calendar year 2027, 2030, and 2032, to determine the PRO's compliance with its source reduction plan and the requirements of subdivision (a) of section 42057 of the Public Resources Code.**"

Article 10: Registration and Data Reporting Requirements

§ 18980.10.2. Data Report Contents

Subparagraph (a) requires producers or their PRO to submit, by CMC and for the previous calendar year, the total weight of material and the total number of plastic components that were sold, distributed, or

imported in or into the state, the total weight of material disposed, and the total weight of material recycled.

Producers may not have a way to accurately measure or determine the actual number and weight of covered materials in this state-specific manner, given the complexity of that proposition. Therefore, AMERIPEN requests that producers explicitly be allowed to use national sales data and prorate it to estimate their share produced for California. This is critical to ensure many producers have a viable pathway to satisfy the reporting obligations, particularly those with fewer resources as a matter of equity. The Maine Department of Environmental Protection has adopted rules for Maine's packaging EPR program that can serve as a model for estimating units produced.[4]

Related, manufacturers occasionally produce customized packaging for products for which the producers cannot extrapolate their reporting or data from standard packaging options. In these cases, packaging may be tailored and determined after the product to be packaged is manufactured. AMERIPEN recommends affording a PRO some authority to determine a mechanism for estimating reportable volume in such exceptional circumstances involving customized packaging.

Various requirements in this section entail reporting on the postconsumer disposition of covered material, including the weight of material disposed or recycled. Individual producers cannot obtain this information in any generally feasible manner, so recyclers and disposers must provide it to the reporting entities. This data sharing necessity is not readily apparent in the proposed regulations but is a fundamental requirement of any functional EPR program. Therefore, AMERIPEN requests the addition of language that obligates recyclers, disposers, and other postconsumer managers of covered material to share relevant data with reporting entities. Such language may include confidentiality requirements, as necessary.

AMERIPEN is grateful for the change to the reporting increments in paragraph (b) from monthly to annual. This will greatly lower the burden on producers to gather and manage supply data, especially firms with less capacity to track such data.

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

§ 18980.11. Requirements for Local Jurisdictions and Recycling Service

Paragraph (b) includes language stating that "the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable," thereby allowing a local jurisdiction to seek an exemption from collection of that covered

[4] 06-096 Code of Maine Rules Chapter 428, § 9 (D)(2).

material. While that may be a reasonable outcome in some cases, AMERIPEN cautions that the mandatory nature of this sentence removes flexibility for implementing the program and could jeopardize collaborative efforts to ensure collection of covered materials. Therefore, AMERIPEN argues the "shall" should be replaced with "may" to maintain full discretion for CalRecycle when considering collection exemptions.

§ 18980.11.1. Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers

AMERIPEN requests addition of a requirement for a PRO to make exemption requests available to all participant producers so that they have awareness of local jurisdictions' and recycling service providers' plans for material management.

AMERIPEN suggests clarifying throughout this section that these provisions apply to recycling "and composting" programs, as is provided in subparagraph (d)(3).

§ 18980.11.2. Exemption for Rural Counties and Rural Jurisdictions

As with the request in the previous section, AMERIPEN requests that a PRO be required to inform participant producers of any adopted rural jurisdiction exemptions.

Article 13: Enforcement Oversight by the Department and Administrative Civil Penalties

§ 18980.13. Compliance Evaluation and Determination

Paragraph (c) provides that, "Except as specifically set forth in this section, for each discrete requirement of the Act, this chapter, or a Producer Responsibility Plan, each distinct condition, action, or course of action constituting or resulting in a violation of the requirement shall constitute a single violation of the Act." It is unclear what constitutes a "distinct condition, action, or course of action." For example, it is unclear if the production of a line of products that does not meet the recyclability requirements of SB 54 constitutes a single action, or if the production of each product is a separate action. AMERIPEN continues to seek clarification of this provision but cautions the Department to implement it in a manner that balances compliance with avoiding being prohibitively punitive. Such balance would be achieved, for example, by treating a noncompliant product line as a single violation.

As used in paragraph (d) and throughout Article 13, AMERIPEN seeks clarification as to the meaning of the word "accrue." PRC section 42081(a)(3) states that, "Penalties against a PRO or producer shall not begin accruing with respect to a violation until 30 calendar days following the notification of the violation." AMERIPEN is under the understanding and supports that "accruing" in this context means accumulating, such that entities would not be liable for penalties for any violations that occur before the thirty-first day after the notice of violation. Does CalRecycle interpret "accrue," in SB 54 and in the proposed rules, to mean "to accumulate" or does CalRecycle interpret it "to become due?" If the

Department interprets it as "to become due," AMERIPEN requests it provide parties receiving a notice of violation with ten business days to respond to and cure any violation to provide reasonable time to address simple issues without incurring penalties. AMERIPEN appreciated the replacement of "further accrue" with "begin accruing" in subparagraph (e)(1) for penalties relating to failure to maintain records in the prior draft. This is more consistent with SB 54 and the other provisions in this section, such that an initial violation would not be subject to a penalty before the thirty-day period.

AMERIPEN continues to seek more direction in the enforcement section about how CalRecycle will deal with obligated producer entities that fail to register with a PRO or act as an Independent Producer, thereby avoiding financial and compliance obligations ("free riders"). At a minimum, AMERIPEN recommends that CalRecycle: (1) develop a methodology to identify producers that fail to register or act by the deadline; and (2) state in the regulations that any entity found to have avoided registration as a covered entity will be required to publicly report to the Department on the nature and duration of its violation and be obligated to compensate a PRO and the Department for the fees and penalties it would have paid if it had complied with its obligation in a timely manner.

§ 18980.13.4. Procedure for a Hearing

Paragraph (b) provides only 15 days for a respondent to request a hearing to contest a proposed enforcement action, which was reduced from the 30 days provided in the draft version of the rules released in December 2023. Respondents need ample time to consider the allegations of a violation, examine the circumstances, and decide whether contesting the matter is merited. To afford sufficient time accordingly, AMERIPEN continues to request restoration of the full 30 days to make a hearing request.

Paragraph (d) allows the Department to "take any disciplinary or remedial action authorized under" SB 54 after conducting a hearing on the merits or if no hearing is requested. The mere conducting of a hearing should not authorize the imposition of penalties; instead, the Department should only proceed with penalties if the hearing proves the respondent is at fault. AMERIPEN requests this paragraph amended accordingly as follows: "After conducting a hearing on the merits **and finding the respondent at fault**, or if no hearing is requested, the Department may take any disciplinary or remedial action authorized under the Act, including those described in section 18980.13.5."

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CHAPTER 11.5 ENVIRONMENTAL MARKETING AND LABELING

Article 1: Approval of Certification Entities

§ 18981. Third-Party Certification Entity Criteria and Approval Process

AMERIPEN appreciates the amendment made to subparagraph (b)(2)(B) consistent with the prior amendment made to subdivision (a)(4)(B) of section 18980.3.4 to exempt transactions for routine or administrative expenses unrelated to approval.

# # #

AMERIPEN strives to offer a good-faith and proactive approach. We continue to focus on strategies that develop and/or strengthen policies to advance the "reduce, reuse, recycle" strategies, while also enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN looks forward to the continued open dialogue with the Department while collectively balancing the myriad needs of the packaging industry, developing sound solutions to foster a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, ultimately supporting the success of this program. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

AMERIPEN thanks the Department for this opportunity to provide written comments regarding the proposed regulations for SB 54 and appreciates the Department staff during the SB 54 regulatory process. Please feel free to contact me by email (GMelkonian@serlinhaley.com) with any questions on AMERIPEN's positions.

Sincerely,

Gregory Melkonian
Regulatory and Government Affairs Associate
Serlin Haley, on behalf of AMERIPEN