Summary and Response to Comments: Proposed Regulations On Existing Rigid Plastic Packaging Container (RPPC) Program Regulations.

Comments received at or for CalRecycle's January Public Meeting

Sorted by Comment Number

Comments received at or for January 17, 2012 public meeting

Note: Comment numbers starting with "L4" denote comments contained in letters or other written communications received at or prior to the January 17, 2012 public meeting.
Comments numbered S2 denote comments by speakers at the January 17, 2012 public meeting.
Example: Comment L4-01-02 is the second comment submitted in letter L4-01.

Comment Number	Commenter	Summary of Comment	CalRecycle Response	Revisions Needed	Adopted Revised Regulations Section/Area
L4-01-01	Patricia Enneking, Klockner Penteplast	We ask you to reconsider the proposed RPPC regulations. Our major concerns are the narrowing of the definition of postconsumer material and the elimination of source reduction compliance credit for resin switching.	Comment noted. See L-01-01 and L-05-08. Based on the complete record the Department adopted the proposed revised regulations on January 17, 2012.	No change.	General
L4-01-02	Patricia Enneking, Klockner Penteplast	The proposed revisions to the definition of postconsumer material (PCM) disallow including manufacturing scrap that is commonly disposed and not commonly reused within an original manufacturing process. Waste is waste and we believe companies should get compliance credit for using any plastic material destined for waste disposal, not just household waste. According to the EFIS, currently 118.3 million containers use manufacturing waste to claim recycled content so eliminating this in the definition of PCM will put manufacturers at risk of non-compliance.	See L-01-01 and L-05-03. Manufacturers are not required to comply with the RPPC regulations through use of the 25% postconsumer material option. They may comply with other compliance options included in the adopted revised regulations as outlined in Sections 17944 and 17944.1. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13.	No change.	17943 (q)
L4-01-03	Patricia Enneking, Klockner Penteplast	Another concern re: the proposed definition of PCM is that the amount of available recycled material from consumer sources is in short supply. As recently reported by the Association for Postconsumer Recyclers, American Chemistry Council and National Association for PET Container Resources, the supply of post-consumer resin is significantly outpaced by demand. Provided 2009 Report on Postconsumer PET Recycling Activity (National Association for PET Container Resources (NAPCOR), 2010) and 2009 United States National Postconsumer Plastics Bottle Recycling Report (American Chemistry Council and Association of Postconsumer Plastic Recyclers, 2010)	See L-05-03. The Department relied on the 2009 American Chemistry Council and Association of Postconsumer Plastic Recyclers national data in preparing its analysis of the availability of postconsumer material in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (q)
L4-01-04	Patricia Enneking, Klockner Penteplast	The shortfall of supply of post-consumer resin will be further exacerbated by the amended definition of an RPPC, which expands the definition to include some 357.2 million containers not currently included. In addition to the 118.3 million containers noted above [L4-01-02] there will be further strain on an already stressed postconsumer resin supply and no gains for California citizens or businesses.	See L-05-01. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, the regulation of almost identical containers section, page 11 and the availability of postconsumer material section, page 13.	No change.	17943 (aa)

L4-01-05	Patricia Enneking, Klockner Penteplast	The existing definition of PCM parallels the US Federal Trade Commission's green marketing guidelines that state that a recycled content claim may be made for materials that have been recovered or otherwise diverted from the solid waste stream either during the manufacturing process or after consumer use. To the extent the source of recycled content includes manufacturing waste, the FTC requires the manufacturer to have substantiation that the material would have entered the waste stream. FTC does not allow a manufacturer to count spilled raw materials and scraps left over and reused within the original manufacturing process. By maintaining the existing definition of PCM, the RPPC regs will be uniform with the FTC green marketing guidelines.	See W2-09-04.	No change.	17943 (q)
L4-01-06	Patricia Enneking, Klockner Penteplast	The proposed definition of source reduced container disallows credit for resin switching, and thus compromises a manufacturer's capacity to select the best resin for its package and forces them to maintain the status quo (a pool of resin types available circa 1995, the operative year of this program). It also prevents manufacturers from exploiting new resins and technological advancements, which can reap substantial environmental benefits.	See L-05-08	No change.	17943 (af); 17943 (i)
L4-01-07	Patricia Enneking, Klockner Penteplast	Maintaining credit for resin switching is in keeping with the Department's stated preference for source reduction as a preferred approach to waste management. It also affords the greatest flexibility to manufacturers to use the best packaging options.	See L-07-01.	No change.	17943 (af); 17943 (i)
L4-02-01	William O'Grady, Talco Plastics	We urge the adoption of the revised RPPC regulations. They are consistent with statute and legislative intent, encourage more postconsumer high density polyethylene (HDPE) supply, and discourage resin switching to resins that may be contaminants in the recycling stream.	Comment noted. Commenter supports the adopted revised regulations.	No change.	General
L4-02-02	William O'Grady, Talco Plastics	CalRecycle and California's postconsumer recycling industry must continue to promote the expansion of domestic postconsumer recycling projects and programs. California-based processors and manufacturers of plastic products and packaging could be utilizing postconsumer material that is currently being shipped overseas, and in so doing provide thousands of jobs and reduce greenhouse gas emissions.	Comment noted. Comment is beyond the scope of the regulations package.	No change.	General
L4-03-01	Rick Zirkler, CarbonLite	We urge the timely adoption and enforcement of the revised RPPC regulations. They are consistent with statute and legislative intent, encourage more postconsumer polyethylene terephthalate (PET) and high density polyethylene (HDPE) supply, and discourage resin switching to resins (e.g., from PET and HDPE to PP) that are less recyclable and considered a contaminant in the recycling stream per some studies.	Comment noted. Commenter supports the adopted revised regulations.	No change.	General
L4-03-02	Rick Zirkler, CarbonLite	Thanks in part to the Plastic Market Development Program, California has also been steadily increasing its recycled plastic processing and manufacturing capacity. Current capacity for PET is around 200 - 220 million pounds including the projected 100 - 120 million pounds from CarbonLITE whose PET recycling facility is just starting up. PET extrusion capacity in California is about 525 - 585 million pounds, and demands for PET will only increase once our facility comes on line.	Comment noted. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13.	No change.	General
L4-03-03	Rick Zirkler, CarbonLite	We need to feed the continuing growth of domestic plastic processing facilities. California-based processors and manufacturers of plastic products and packaging could be utilizing material that is currently being shipped overseas, and in so doing provide thousands of jobs and reduce greenhouse gas emissions.	Comment noted. Comment is beyond the scope of the regulations package.	No change.	General

S2-01-01	Randy Pollack, Plastic Shipping Container Institute	We oppose the elimination of compliance credit for resin switching. This makes it especially hard for plastic shipping pail manufacturers to comply with the law. Postconsumer resin is not an option for most pail manufacturers. It has been demonstrated that pails with 25% PCR significantly reduces the strength and stress limits of the container.	See L-05-02 and L-05-03.	No change.	17943 (af)
S2-01-02	Randy Pollack, Plastic Shipping Container Institute	Incorporating 25% blow molding PCR is not possible with most of the manufacturer's equipment. Millions of dollars would be spent on equipment to produce sub-standard pails.	See W2-07-02. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13 and the updated economic and fiscal impact statement section, page 35.	No change.	17943 (af)
S2-01-03	Randy Pollack, Plastic Shipping Container Institute	A majority of PCR comes from bottles which is not same resin as that used in injected molded shipping containers. Information provided to the Department shows that not enough PCR exists to meet the requirement in revised regulations.	See L-05-05. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13.	No change.	17943 (af)
S2-01-04	Randy Pollack, Plastic Shipping Container Institute	Adding 354 million containers to the program is inadvisable (as we've commented before). We urged the Department to analyze past cert cycles to see if changes to the program make sense and we don't think this has been done.	See L-05-01.	No change.	17943 (aa)
S2-01-05	Randy Pollack, Plastic Shipping Container Institute	Re: the Economic Impact Study, there were very few results, yet the proposed changes will add thousands of manufacturers. We believe the estimated cost impact is too low. To say that only a $2 million impact to the consumers of California is going to occur, then the companies cannot withstand any sort of scrutiny.	See L-05-04. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated economic and fiscal impact statement section, page 35.	No change.	Economic Analysis
S2-01-06	Randy Pollack, Plastic Shipping Container Institute	The proposed changes will have a significant burden on small businesses in particular. Just the recordkeeping alone will be costly and the regs may result in manufacturers having to break contracts with suppliers. The passage of these revised regulations will stop many small businesses shipping into California.	See L-07-15. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated economic and fiscal impact statement section, page 35.	No change.	Economic Analysis
S2-01-07	Randy Pollack, Plastic Shipping Container Institute	We request that further discussions of these regulations should take place until we really analyze the best way to get this program working.	Through the Department's informal process In 2007 the RPPC program was discussed at 4 workshops and 4 Committee and Board Meetings. Additionally, in 2007 the Department provided 3 opportunities for written comments on the proposed language. In the formal rulemaking process there was a 45-day public hearing, 4 workshops and a public meeting regarding adoption of the regulations in addition to the three opportunities to submit written comments (two 45-day comment periods and a 15-day comment period). In addition the Department Director informed stakeholders on several occasions that the Department will look at ideas for changes in all programs during the development of the Department's Report to the Legislature (due in 2014).	No change.	General
S2-02-01	Tim Shestek, American Chemistry Council	We support the comments of Randy Pollack. [see above]	See L-05-01, L-05-03, L-05-04, L-07-02, L-07-15 and S2-01-07. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13 and the updated economic and fiscal impact statement section, page 35.	No change.	General
S2-02-02	Tim Shestek, American Chemistry Council	Re: resin switching, the Department has explained it's disallowing this option as it will have a negative option on recycling. We disagree and have provided data to the Department supporting this. We would encourage the regulations to allow for companies to switch from one resin to the other and demonstrate compliance.	See L-05-08, L-05-09, L-05-11, L-07-05, L2-05-08 and W2-06-01. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4 and the availability of postconsumer material section, page 13.	No change.	17943 (af)

S2-02-03	Tim Shestek, American Chemistry Council	We're also concerned about the availability of usable postconsumer material. We recommend the regulations include a means for a company to seek a waiver if it can't comply due to the lack of PCR.	See L-07-06. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4 and the availability of postconsumer material section, page 13.	No change.	17943 (aa)
S2-03-01	George Larson, Illinois Tool Works	ITW commends staff for making practical changes to improve the regulations. We support their adoption.	Comment noted. Commenter supports adopted revised regulations.	No change.	General
S2-03-02	George Larson, Illinois Tool Works	The pre-certification process will be a big help to the regulated community by giving advance notice of a pending certification cycle. It's been difficult in the past to gather the data for a cert when requested to do so after the measurement period.	Comment noted. Commenter supports pre-certification process (adopted revised regulations Section 17945.1).	No change.	17945.1
S2-03-03	George Larson, Illinois Tool Works	We support the changes in the definition of postconsumer material (PCM) the statutory clarification as made by SB 1344.	Comment noted. Commenter supports definition of postconsumer material (adopted revised regulations Section 17943 (q)).	No change.	17943 (q)
S2-04-01	Bob Houston, Assn of Plastics Recyclers	We commend staff efforts and support adoption of these regulations.	Comment noted. Commenter supports adopted revised regulations.	No change.	General
S2-05-01	Mark Murray, Californians Against Waste	Regarding resin switching, twenty years ago, when this law took effect, and with so little processing & recycling manufacturing infrastructure in the state, that it was ok if the Board cut a few corners with regard to the interpretation of the statute. Resin switching is contrary to statute, and probably switching from HDPE or PET to PP (most common switching now) would not comply with the recyclability clause anyway. So don't compromise the regulations by reinstating this. Have full enforcement of the existing law.	See L-05-08. The Department used a different statutory basis for making the change. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option, page 4.	No change.	General
S2-05-02	Mark Murray, Californians Against Waste	We collect 450 million pounds of beverage container plastic. There's lots of non-beverage container plastic that we're collecting for recycling, such as a HDPE milk jugs. So it becomes more like 750 million pounds. Yet 25% of the HDPE and 21% of that PET, that's what's being utilized in California. The balance, 3/4 of all of that plastic that we're collecting for recycling in California, we're exporting overseas because we don't have the processing capacity, we don't have the end-use demand for that material.	See L-14-01.	No change.	General
S2-05-03	Mark Murray, Californians Against Waste	This is the only tool that we have to create market demand for all of that plastic that we're recycling. We have the collection infrastructure. And, we have tremendous amount of processing capacity. Growing the manufacturers in California that are already in this business is how we're going to, kind of, close the loop in terms of plastic recycling.	Comment noted. Comment is outside the scope of the regulations.	No change.	General
S2-05-04	Mark Murray, Californians Against Waste	I want to compliment the staff, the 2007 staff and the staff today that have worked on this issue. If there needs to be structural changes in the statute, the place to do that is in the legislature, not by compromising the regulation.	Comment noted. Comment is outside the scope of the regulations.	No change.	General
S2-06-01	Brenda Coleman, California Chambers of Commerce	We agree with Randy Pollack's comments [see above].	See L-05-01, L-05-03, L-05-04, L-07-02, L-07-15 and S2-01-07. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, the availability of postconsumer material section, page 13 and the updated economic and fiscal impact statement section, page 35.	No change.	General
S2-06-02	Brenda Colmean, California Chambers of Commerce	We're concerned that the estimated cost impact (of 5 cents per container) will be significant to small businesses and consumer when combined with other new regulatory costs. So please consider the combined economic impacts when considering adoption of these regs.	Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, "Good Faith Effort" requirements and factors to consider regarding impacts on small businesses before issuing a penalty section, page 34 and the updated economic and fiscal impact statement, page 35.	No change.	Economic Analysis