

Summary and Response to Comments: Proposed Regulations On Existing Rigid Plastic Packaging Container (RPPC) Program Regulations.					
<u>15-day Public Comment Period.</u>					
Sorted by Comment Number					
<p>Note: Comment numbers starting with "L3" denote comments contained in letters or other written communications received during the 15-day Comment Period ending Nov. 15, 2011.</p> <p>Example: Comment L3-03-02 is the second comment submitted by commenter L3-03.</p>					
Comment Number	Commenter	Summary of Comment	CalRecycle Response	Revisions Needed	15-day Section/Area
L3-01-01	Jacob Cassady, American Cleaning Inst.	It's unclear why the Department is requiring a manufacturer to describe the "methodology" of how a product is concentrated. The formula only requires the uses before and after concentration, and nothing else in the regulations relates to how the product was concentrated. This requirement should be deleted.	See L2-05-12.	Eliminated the requirement to describe how a product is concentrated (adopted revised regulations Section 17945.3 (d)(3) and (4)).	17945.3 (d)(3) and (4)
L3-01-02	Jacob Cassady, American Cleaning Inst.	We object to requiring a description of how a product was concentrated because it involves releasing trade secrets. Concentrating products almost universally requires substantial product reformulations.	See L2-05-12.	Eliminated the requirement to describe how a product is concentrated (adopted revised regulations Section 17945.3 (d)(3) and (4)).	17945.3 (d)(3) and (4)
L3-02-01	Mark Murray, Californians Against Waste (CAW)	We again thank CalRecycle staff for their work on updating the RPPC regulations and continue to be supportive of the RPPC regulations which are consistent with statute and encourage more recycled and recyclable plastics.	Comment noted. Commenter supports adopted regulations package.	No change.	General
L3-02-02	Mark Murray, Californians Against Waste (CAW)	The Federal Trade Commission's Green Guidelines do not define post-industrial waste as postconsumer waste. They serve to defend and protect environmental claims from false advertising but should not be construed as definitions.	See W2-09-04	No change.	17943 (q)
L3-02-03	Mark Murray, Californians Against Waste (CAW)	The FTC Green Guidelines are silent on the issue of what is and is not postconsumer. Recycled content and postconsumer are not the same, and the Green Guidelines should not be used to define "postconsumer" in the RPPC regulations.	See W2-09-04	No change.	17943 (q)
L3-02-04	Mark Murray, Californians Against Waste (CAW)	There is more than sufficient postconsumer material to meet demand per CalRecycle's <i>2011 Biannual Report of Beverage Container Sales, Return, Redemption and Recycling Rates</i> . As we've previously noted [see W4-05-01], if all of the plastic RPPC containers sold in California had to meet a 25% recycled content requirement they'd need about 200,000 tons of plastic and there are over 275,000 tons available. Also per the same report cited, over 90% of HDPE generated is collected for recycling but only 4% of PP. With the implementation of AB 341, which mandates a 75% recycling rate (including commercial and apartments), the recovered tonnages will increase, and collected PP potentially jumping from 4 tons to 82 tons.	See W4-05-01. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material, page13.	No change.	17943 (aa)
L3-02-05	Mark Murray, Californians Against Waste (CAW)	Despite the anticipated growth of a recycled PP market, we cannot stress enough the importance of recovering other recyclable plastics (i.e., HDPE and PET). California companies continue to invest in the collection and processing infrastructure for HDPE and PET, where PP can act as a contaminant.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	17943 (aa)
L3-03-01	Holly Evans	If adopted after the 15-day comment period, when will the new requirements take effect?	See L-05-07.	No change.	General Process

L3-04-01	Allison Schumacher, Consumer Electronics Assn, etc.	In follow up to our prior joint comments [see L2-03], we reiterate our deep concern that the proposed change to the definition of RPPC will bring clamshell packaging under the scope of the RPPC program because of the change to include containers capable of at least one (rather than multiple) closures. We urge CalRecycle to exclude packaging containers capable of only one closure (e.g., clamshells).	See L-05-01	No change.	17943 (aa)
L3-04-02	Allison Schumacher, Consumer Electronics Assn, etc.	The Department's objective to "level the playing field" does not justify the proposed change to the definition of RPPC because RPPCs designed for reclosure are significantly different than those not designed for reclosure. Clamshells (sealed) are chosen for protective qualities, anti-theft and retail benefits, and aren't designed for reuse.	See L-05-01. Public Resources Code (PRC) Section 42301 (f) does not provide authority to the Department to distinguish between protective qualities, anti-theft, or other intended or unintended characteristics and requirements related to the RPPC. . The commenter refers to "reuse", however the comment provided is not specifically directed at the Department's definition of reusable rigid plastic packaging container per PRC Section 42301(d) (adopted revised regulations section 17943(z)). Commenter correctly identifies that containers could be designed for reuse, one of the compliance options under PRC Section 42310, per Section 17943(z).	No change.	17943 (aa) and (z)
L3-04-03	Allison Schumacher, Consumer Electronics Assn, etc.	Including clamshells as RPPCs will impose enormous cost and design change burdens and logistical difficulties on an industry which does not manufacture on a state-by-state basis. Electro-industry products are sold into broad distribution networks, frequently owned by retailers, which preclude manufacturers from determining where the products ultimately appear for retail sale.	See L-05-01. Additionally, the Public Resources Code (PRC) Section 42310 specifically provides the directive that all RPPC for sale or distribution in California shall meet one of the compliance criteria.	No change.	17943 (aa) Economic Analysis
L3-04-04	Allison Schumacher, Consumer Electronics Assn, etc.	The compliance options in Section 17944 are not feasible because high quality, reasonably priced postconsumer plastic resins are unavailable or inadequate to meet the electro-industry's needs. Also many of our products are made and packaged overseas requiring the availability of PCM there, and there is no evidence for the economic feasibility of large amounts of recycled plastics in such markets.	See L-05-03 Manufacturers are required to comply with the RPPC regulations through one of the compliance options included in PRC 42310 and 42310.3 and further explained in adopted revised regulations sections 17944 and 17944.1.	No change.	17944
L3-04-05	Allison Schumacher, Consumer Electronics Assn, etc.	The proposed rule may result in unforeseen demand for postconsumer resin, leading to speculative price increases and possible material shortages. We therefore urge CalRecycle to initiate a study of the impact of these regulations on the postconsumer resin market before adopting this rule change. Alternatively, we recommend a phased approach involving smaller percentages of PCM initially required and rising gradually to allow supplies to adjust.	See L-05-03 and L2-03-03. 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.		17943 (aa); 17944; Economic Analysis
L3-04-06	Allison Schumacher, Consumer Electronics Assn, etc.	The 45% recycling rate compliance option is not feasible because it's too high a rate for packaging that has no dedicated infrastructure or operational mechanism beyond the blue bins. Data from other programs (e.g., glass bottles) suggest the likelihood of achieving a 45% rate is unlikely where no disposal ban exists. We urge CalRecycle to reconsider using resources to monitor and enforce an unachievable recycling rate.	See L-05-02, L-05-03, S-09-01 and L2-03-04.	No change.	17944
L3-04-07	Allison Schumacher, Consumer Electronics Assn, etc.	The reusable and refillable package options are inapplicable for electro-technical products, which are typically packaged in heat-sealed packages to deter theft and pilfering and prevent opening and resealing.	See L2-03-05 and L-05-02.	No change.	17944
L3-04-08	Allison Schumacher, Consumer Electronics Assn, etc.	Eliminating the resin switching allowance in the source reduction option renders source reduction as worthless for the electro-technical industry. We encourage CalRecycle to retain the resin switching option as long as the regulated entity can demonstrate that the resin/material choice produces overall environmental improvements.	See L-05-08 and L-05-02	No change.	17943 (af) and 17944;

L3-04-09	Allison Schumacher, Consumer Electronics Assn, etc.	Because heat-sealed clamshells will be subject to these requirements for the first time and will not be able to take advantage of the averaging method of compliance, CalRecycle should reinstate some compliance options allowed in the past: the "all container rate" option (removed in 2005 by SB 1729), and the resin switching option.	PRC 42310 provides all RPPCs with five options for compliance. Additionally, product manufacturers, including those using "clamshells" can be included in the averaging and/or alternative methods of compliance (see adopted revised regulations Sections 17944, 17944.1, 17945.5 (b)(2), (c), (d)(4), (e)(5) and (f)(2)). As for the "all container rate" compliance option the California Legislature eliminated this in 2005 with the passage of SB 1729. The Department does not have the authority to restore options removed from statute through adoption of regulations. Finally, with regards to resin switching, see L-05-08;	No change.	17944, 17944.1, 17945.5 (b)(2), (c), (d)(4), (e)(5) and (f)(2)
L3-04-10	Allison Schumacher, Consumer Electronics Assn, etc.	We encourage CalRecycle to consider providing new compliance options for newly covered RPPCs.	The statutes do not provide the Department with the ability to provide new or additional RPPC compliance options.	No change.	17944
L3-04-11	Allison Schumacher, Consumer Electronics Assn, etc.	We urge CalRecycle to include a process whereby regulated entities can petition to have certain RPPCs excluded from the rule for such reasons as unreliable supplies of postconsumer resins, speculative prices for postconsumer resins, and technical or functional considerations unique to the covered packaging.	Per PRC 42310 and 42310.3, product manufacturers have multiple options for compliance, including but not limited to the use of postconsumer resin in RPPCs. Adopted revised regulations Section 17944 provides that if it is technologically infeasible for a RPPC to meet the 25% postconsumer material option that it comply using one of the other compliance options consistent with PRC 42330 (a) that says a Department waiver from the postconsumer material content requirement is not a waiver from any other compliance option listed in PRC Section 42310. Adopted revised regulations Section 17946 allows a product manufacturer to petition for a waiver from the requirements under certain conditions such as a newly introduced project or general waiver if less than 60 percent of California single family households have curbside recycling (see adopted revised regulations Section 17946). Waivers are not allowed due to variable PCM supplies or pricing.	No change.	17944 and 17946
L3-04-12	Allison Schumacher, Consumer Electronics Assn, etc.	CalRecycle has indicated that "blister packs" which consist of a plastic enclosure affixed to cardboard backing is not a RPPC but we would appreciate confirmation of this determination as blister packs are commonly used in the electro-industry.	See S-09-01.	No change.	17943 (aa)
L3-04-13	Allison Schumacher, Consumer Electronics Assn, etc.	We urge CalRecycle to consider the impact of the expanded scope of these regulations on the State's budget, particularly in terms of enforcement and administrative expenses to oversee the rules.	See L-05-01.	No change.	17943 (aa)
L3-05-01	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-01], the definition of Postconsumer Material should be revised to reinstate including as PCM "internally generated scrap" commonly disposed and reused in a process other than the original manufacturing and fabrication process, if the product manufacturer can substantiate that the material would have been disposed in a landfill. This would encourage the maximum use and reuse of any plastic material that may be commonly disposed.	See L-01-01	No change.	17943 (q)
L3-05-02	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-02], the proposed change to the definition of Reusable RPPC to exclude containers used to permanently store the original product stored in the container goes beyond the intent of statute (PRC 42301(d)) and would unnecessarily impact many RPPCs used to store the original products (e.g., hardware, tools, toys, CDs, paper clips).	See L-07-02.	No change.	17943 (z)

L3-05-03	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-03], the proposed change to the definition of RPPC would include containers designed to be folded or collapsed into a more compact form when not holding a product. This is inconsistent with the statutory definition that states an RPPC must have a relatively inflexible shape or form.	See L-02-01A.	No change.	17943 (aa)
L3-05-04	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-04], the proposed changes to the RPPC definition would make many new containers subject to the program and unnecessarily add to the Department's workload, establish unrealistic compliance expectations, and impose new regulatory burdens on product manufacturers never intended to be included in the program.	See L-05-01	No change.	17943 (aa)
L3-05-05	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-05], the proposed changes to the RPPC definition would also strike language requiring regulated containers to be capable of multiple reclosure. This means containers such as clamshells are now subject to the program and raises concerns about Department workload and PCM supply.	See L-05-01. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page13.	No change.	17943 (aa)
L3-05-06	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-06], the Department should determine whether the supply of PCM is adequate before adding any new containers to the program.	See L-05-09. 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 (aa)
L3-05-07	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-07], the changes to the definition of "Source-Reduced Container" delete the credit for resin switching. This change would limit product manufacturers' ability to choose the most efficient container type for the product integrity and functionality needed.	See L-05-08 and L-05-11.	No change.	17943 (af)
L3-05-08	Tim Shestek, American Chemistry Council	Eliminating the credit for resin switching is not needed to support recycling efforts. As previously commented in the 2 nd 45-day comment period [see L2-05-08] we've presented evidence demonstrating the tremendous growth in non-bottle RPPC recycling over the past few years, as well as market demand for the material.	See L-05-08 and L2-05-08. 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 availability of postconsumer material section, page 13. No part of the decision for resin switching prohibition was based on a desire or intent to support recycling or recycler efforts. The decision was strictly based on statutory language.	No change.	17943 (af)
L3-05-09	Tim Shestek, American Chemistry Council	As previously commented in the 2 nd 45-day comment period [see L2-05-09], the regulations now state that if it is technologically infeasible for a container to meet the 25% PCM requirement it must comply under another compliance option. But the regulations also recognize that technological feasibility is a legitimate basis for mitigation or reduction of penalties. Such technological waivers have long been granted for containers where the products require high purity or a long shelf life or where there may be a chemical reaction of container and product. The regulations should continue to allow for such waivers, or alternatively, add such a provision to the section on exemptions.	See L-07-06.	No change.	17944 (a)(1)
L3-05-10	Tim Shestek, American Chemistry Council	The economic analysis did not include the potential costs to new businesses that will now be subject to these requirements.	See W-02-07. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement, page 35.	No change.	Economic Analysis
L3-05-11	Tim Shestek, American Chemistry Council	In evaluating the costs to consumers and businesses, the Economic Analysis failed to discuss whether postconsumer material would be available in sufficient quantities in order to comply and what costs business may incur to obtain the material.	The American Chemistry Council and the Association of Postconsumer Plastic Recyclers' <i>2010 United States National Postconsumer Plastic Bottle Recycling Report</i> states that plastic bottle recycling in the United States reached a record high of 2.58 billion pounds in 2010 with increases in PET, HDPE and polypropylene (PP) resins. The recycling of PET resins totaled nearly 1.56 billion pounds, HDPE resins at nearly 1 billion pounds, and PP at 35 million pounds. Additionally, the Department's <i>Biannual Report of Beverage Container Sales, Returns, Redemption, and Recycling Rates</i>	No change.	Economic Analysis

			<p>(November 2011), indicates that 374.6 million pounds of PET containers, 51.2 million pounds of HDPE containers and 0.6 million pounds of resin types 3—7 were recycled in California during 2010.</p> <p>The Economic Analysis determined that product manufacturers would need less than 18 million pounds of postconsumer material to comply with the amended regulations. This is less than one percent of available supply of postconsumer bottle material. The 4.4 million pounds that California-based manufacturers would need is about one percent of the recycled beverage bottles. Finally, the costs of acquiring the postconsumer and virgin resin materials were included in the manufacturer cost calculation in the Economic Impact Statement. See Table 6, page 20 for a listing of resin prices.</p> <p>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, page 35.</p>		
L3-05-12	Tim Shestek, American Chemistry Council	The Economic Analysis does not take into account the potential millions of dollars in costs for businesses to obtain new machinery to comply with the law.	<p>See W-02-05. Additionally, the Economic Analysis assumed (assumption 12, page 18) that product and container manufacturers did not need to purchase new equipment to make compliant containers. This assumption is consistent with the results of the 2008 RPPC survey where 60 percent of the manufacturers stated that they did not expect any capital equipment costs. Within the analysis conducted, the Department expects that some manufacturers will have to purchase jigs, dies and molds in the redesign of containers. These expenses are operating costs and are shown in the analysis as an increase in container costs.</p> <p>The Department's further research into the business costs found that manufacturers routinely invest in new equipment to increase output, reduce costs, and/or be compliant with new standards. For example, the 2007 US Department of Commerce Economic Census of Manufacturing indicates that 184 plastic bottle manufacturers (NAICS code 326160) spent an average of \$1.35 million per plant on new capital equipment. These capital equipment investments are not to meet the requirements of California's RPPC regulations, they are done to reduce costs, increase production, keeping up with technological advancements, and other business needs to remain competitive.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement, page 35.</p>	No change.	Economic Analysis
L3-05-13	Tim Shestek, American Chemistry Council	The Economic Analysis does not consider the significant fiscal impact on some manufacturers who could face lawsuits for voiding current contracts so they can manufacture containers compliant with the law.	See L-05-12.	No change.	Economic Analysis
L3-05-14	Tim Shestek, American Chemistry Council	The regulations do not address the millions of new containers added to the program due to the revised definition of an RPPC that for technological reasons cannot be source reduced or contain postconsumer resin. These product manufacturers are likely to incur significant new costs as they identify and implement alternate means of compliance. A more thorough economic analysis should be required before moving forward with these revised regulations.	See L-05-02, L2-03-04 L3-04-11 and L3-05-12. 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