

The California Rigid Plastic Packaging Container Law



Article By

[Mitzi Ng Clark](#)

[Natalie E. Rainer](#)

[Keller and Heckman LLP](#)

[Packaging Law Blog at Keller and Heckman](#)

- [Environmental, Energy & Resources](#)
- [California](#)

Saturday, May 28, 2016

The California Rigid Plastic Packaging Container (RPPC) Act of 1991 and its regulations are intended to facilitate the reuse and recycling of rigid plastic packaging containers, with provisions that are geared towards increasing the use of postconsumer recycled plastic and reducing the use of virgin material.^[i] The implementing regulations for the law have been modified several times over the years with the last round of amendments being made in 2013. That lengthy rulemaking process resulted in an expanded definition for rigid plastic packaging containers that swept up an additional 350 million containers in its wake.^[ii]

Expanded Definition

The RPPC regulations cover rigid plastic packaging containers having volumes that range from eight ounces to five gallons. These containers include uses for a wide range of products that include, among other items, cleaning products, adhesives, electronics, toys, and paints and coatings. Statutory exemptions do exist, however, for containers used to hold materials regulated by the U.S. Food and Drug Administration (*i.e.*, food, drugs, cosmetics, baby formula, and medical devices); pesticides regulated by the U.S. Environmental Protection Agency; and hazardous substances subject to regulation by the U.S. Department of Transportation.

If a given packaging article meets the definition of an RPPC and is not exempt from regulation, then the manufacturer of the product held in the package is responsible for complying with the regulations by, for example, incorporating at least 25% post-

consumer recycled plastic or source-reducing the container by 10%.^[iii]

The January 2013 amendment to the regulations expanded the definition of RPPC by including in it the following additional packaging.

- Rigid packaging made entirely of plastic, with the exception of caps, lids, labels, and additives, as well as handles, hinges, and other incidental packaging elements made of non-plastic material. Previously, containers with handles, hinges, and the like that were made of non-plastic materials were not included within the scope of the definition;
- Rigid packaging that is designed to be folded or collapsed. Previously, only containers that were made to maintain their shape while holding a product were covered;
- Rigid packaging capable of “at least one closure (including but not limited to closure occurring during the production or manufacturing process).” Previously, the packaging had to be capable of multiple closures and come complete with an attached or unattached lid or cap.

Hence, containers such as buckets, pails, tubs, tubes, jugs, clamshells, and plastic folding cartons are all covered by the law.

Compliance Options

The entities tasked with RPPC regulatory compliance are “product manufacturers,” defined as the entity primarily responsible for “causing a product to be produced that is held inside of an RPPC and sold or offered for sale in California.”^[iv] By way of example, for a bottle of detergent, the product manufacturer would be the detergent manufacturer, rather than the bottle manufacturer. The manufacturers of the RPPCs themselves (*i.e.*, container manufacturers) are not the subject of regulatory obligations under the RPPC regulations; however, a container manufacturer may receive customer requests from product manufacturers concerning the compliance of the containers under the RPPC regulatory scheme.

Compliance with the RPPC regulations can be demonstrated through in one of five ways.^[v] The most common compliance method is to show that at least 25% *post-consumer* resin is used in the RPPC. It is not permissible to count *post-industrial* material (*i.e.*, regrind) toward the 25% *post-consumer* content. Fifty-five percent of all RPPCs sold in California relied on this compliance option^[vi] in 2005 (the last year that the California Integrated Waste Management Board (CIWMB) was required to calculate an “all container” recycling rate and a PET recycling rate on an annual basis).^[vii]

The second most popular compliance method in 2005 was to reduce the source material in the packaging by 10%, as compared to source material in the same container in 1995, or from the first full year the product was placed on the market in California. Approximately 40% of all RPPCs in California complied with this option, which is also known as “light weighting.” Notably, the regulations prohibit resin switching (*i.e.*, reducing the amount of resin used in an RPPC by switching between

polyethylene terephthalate (PET), polypropylene (PP), and polyethylene (PE)) as a way to reduce the source material in the packaging.

Only 5% of RPPCs made use of the third compliance option, which is to demonstrate that the RPPC is reusable or refillable. Refillable packaging is defined to mean that the packaging is routinely returned and refilled by the product manufacturer at least five times with the original product. Reusable packaging is defined as one that is routinely reused at least five times for storing a replacement product. (Note that neither long term storage (*e.g.*, holding batteries in an RPPC), nor returning the original product to the RPPC (*e.g.*, returning CDs to a spindle), amounts to reuse.)

The fourth compliance option is to show that the product has a recycling rate of 45% if it is a brand-specific or a particular type of RPPC; this is considered to be a very high rate of recycling that manufacturers may find difficult to achieve and to substantiate. The fifth option only applies to RPPCs used in the floral industry in California.

In addition to the five criteria discussed above, manufacturers may use an “alternative container compliance method,” which involves offsetting non-compliance by accounting for the use of postconsumer material that is sourced from California in its non-RPPC products. To rely on this compliance option, at least as much recycled material must be used in non-RPPC products (*e.g.*, plastic articles used outside of California) as would be needed for RPPCs in California to meet the 25% recycled content compliance option. Unlike the 25% recycled content compliance option, this compliance option requires that the recycled material be sourced from California.

Increased Time for Demonstrating Compliance

Product manufacturers are not required to provide RPPC compliance information to California Department of Resources Recycling and Recovery (CalRecycle) as a matter of course; rather, only those companies selected by CalRecycle are required to provide compliance information. If selected, a product manufacturer must disclose the identities of any products that are on the market in California and that are packaged in RPPCs. Information about the RPPCs and the compliance option used for these products must be provided to CalRecycle as well.

CalRecycle selects product manufacturers to demonstrate compliance through a pre-certification process, which provides product manufacturers with two years of advance notice, prior to demonstrating compliance. Specifically, CalRecycle sends pre-certification notices to a pool of product manufacturers. One year later, the state will select a subset of product manufacturers from the pool, who will receive certification notices requiring them to demonstrate compliance the following year. In 2016, CalRecycle sent 90 pre-certifications notices to product manufacturers and 20 compliance certifications notices to product manufacturers.

In addition, product manufacturers who have received certification notices may avail themselves of an advisory opinion process. That is, companies may obtain an opinion from California regarding, for example, whether a given article constitutes an RPPC. This process is somewhat limited, however, as only manufacturers that have received certification notices may request an advisory opinion. CalRecycle has

set up a webpage, [Container Determination Tools](#), to assist product manufacturers in determining whether their products constitute an RPPC for purposes of the law.

Enforcement

California's RPPC regulations set out various penalties for violations under the law. These violations include late filing, failure to comply with the regulations, and filing inaccurate or false information. The identities of companies that have been the subject of penalties and the amount of the fines for these penalties, have been published on the CalRecycle website for the years 1997-2005. California has been known to send certification notices to companies that failed to demonstrate compliance in the past.

The penalties associated with non-compliance range up to \$50,000 per violation for a maximum of \$100,000 per product manufacturer. Importantly, a product manufacturer will not be subject to fines and penalties when it relies in good faith on information submitted by container manufacturers. However, container manufacturers are subject to fines when they submit false or misleading information to a product manufacturer.

[i] See California's RPPC Regulations at Sections 17942 through 17949 of the California Natural Resources Code.

[ii] See CalRecycle, Final Statement of Reasons: Rigid Plastic Packaging Container Program, [here](#).

[iii] See CalRecycle, Final Statement of Reasons: Rigid Plastic Packaging Container Program, [here](#).

[iv] See Section 17943(t) of the Natural Resources Code.

[v] See Section 17944(a) of the Natural Resources Code.

[vi] See CalRecycle, Final Statement of Reasons: Rigid Plastic Packaging Container Program, 2012, page 15, [here](#).

[vii] On September 16, 2004, Governor Arnold Schwarzenegger signed into law Senate Bill 1729 (Chesbro, Chapter 561, Statutes of 2004), which repealed the requirement for CIWMB to publish recycling rates for all RPPCs.

© 2019 Keller and Heckman LLP

Source URL: <https://www.natlawreview.com/article/california-rigid-plastic-packaging-container-law>