



June 21, 2022

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Subject: Section 100 Amendment to Forms for the Recycled Content Plastic Trash Bag Program and Section 17979, California Code of Regulations, Title 14 Sections 17975 through 17985.

The California Department of Resources Recycling and Recovery (CalRecycle) is submitting for your review the enclosed changes without regulatory effect relating to the Recycled-Content Trash Bag Program. Amendments to form CIWMB #57 "Plastic Trash Bag Manufacturer Certification" and Form CIWMB #58 "Plastic Trash Bag Wholesaler Certification," incorporated by reference in the California Code of Regulations (CCR), Title 14, Sections 17975 et seq., and shown in Appendix A. Amendments are also being made to Section 17979(a)(1)(A)(2). The amendments are respectfully submitted to the Office of Administrative Law per the CCR, Title 1, Section 100 (Section 100). The proposed amendments are nonsubstantial and can be considered "changes without regulatory affect" as they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

The detailed changes, for each section of the forms, are identified and explained as follows:

CIWMB #57 (11/01) - Plastic Trash Bag Manufacturer Certification Form

Throughout the Form:

The "California Integrated Waste Management Board" has been replaced with "Department of Resources Recycling & Recovery" to reflect the new Department name within the California Environmental Protection Agency since 2010 as enacted by Public Resources Code (PRC) Sections 40400 and 40401.

This update will inform stakeholders of the new Department name consistent with California law. This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is "making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen." Further, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

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The form has been reformatted and edited to comply with Americans with Disabilities Act Standards for Accessible Design (ADA) requirements per Assembly Bill 434, Chapter 780, PRC Section 11546.7. These changes can be considered “change without regulatory effect” as they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision and are meant to comply with ADA requirements.

Header:

The revision date of CIWMB #57 (11/01) has been changed to CIWMB #57 (06/22) to reflect the anticipated approval date for the amended version of the certification form. This is an administrative change that does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision and is meant to record the amended version of the approved certification form.

Instructions:

Removed a fax number that is no longer in use and the phrase “return by mail.” Detailed instructions for submittal of forms including a valid fax number and mailing address are included in another section of the form. Under instruction #3, the reference to items “10 and 10a,” has been changed to items “10a and 10b” to reflect the amended structure needed to comply with ADA standards. The word “item” has also been changed to “items” to reflect the plural reference.

These changes can be considered a "change without regulatory effect" because they meet the requirements of Section 100(a)(1) and (a)(4), in that it is “renumbering, reordering, or relocating a regulatory provision” and "revising structure, syntax, cross-reference, grammar, or punctuation...". Further, the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Definition of Terms:

The order in which the terms are presented are rearranged so that “Plastic Trash Bag” and “Regulated Bag” definitions moved to first and second spots respectively from the top.

This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(1), in that it is “renumbering, reordering, or relocating a regulatory provision.” Further, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section A – Manufacturer Information:

Original Items 10 and 10a:

Items “10 and 10a” were a combination of several intended questions: the sale of plastic trash bags into California, the sale of regulated bags in California, the type of non-regulated bags sold in California, and requests for exemption from compliance. The proposed change does not remove any of these questions or reporting options, nor add any new requirements or questions. The amended form was reorganized into items

“10a, 10b, 10c, and 10d” to make the items easier to understand, clarify and distinguish the different items, accurately represent the requirements in CCR Section 17979, and to comply with ADA standards.

The original item “10” has been reorganized into items “10a and 10b.” The amended item “10a” allows manufacturers to indicate if they did not sell any trash bags in California and item “10b” allows them to indicate if they only sold non-regulated trash bags into California. The regulations state that manufacturers are not subject to requirements if they only sold non-regulated trash bags during a reporting period (CCR Section 17979 (a)(1)(A)(3)). In the original item “10,” manufacturers only had the option of indicating if they sold regulated trash bags into California. The amended items “10a and 10b” are consistent with the reporting requirements in CCR 17979 and allow manufacturers to clearly state if they are not subject to reporting requirements in the regulations. These changes do not remove any of the existing questions or options nor add any new requirements or questions. Therefore, they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

In addition, a grammatical change was made in replacing “I” with “Company” in the amended item “10(a).” This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation..." Further, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

The original item “10a” has been further reorganized into items “10c and 10d.” The original item “10a” did not distinguish between types of non-regulated bags and separate exemptions based on Recycled Plastic Post Consumer Material (RPPCM) quality and RPPCM availability as identified in CCR Sections 17979, 17981, 17982, and 17983. The amended item “10c” allows manufacturers to select the types of non-regulated trash bags sold in California as defined by CCR Section 17979 (Less than 0.70 mil, Non-plastic bags, Medical waste bags, Hazardous waste bags), and item “10d” allows them to select applicable exemptions as defined by the regulations (RPPCM quality and RPPCM availability).

The options under the amended items “10c and 10d” have been re-numbered and re-arranged and the “.” before the “)” under the original option numbers has been removed to reduce redundancy and improve reading accessibility. These changes can be considered a "change without regulatory effect" because they meet the requirements of Section 100(a)(4), in that they are "revising structure, syntax, cross-reference, grammar, or punctuation..." These changes do not remove any of the existing questions or options, nor add any new requirements or questions. Therefore, they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

These changes are being made to make CIWMB #57 consistent with the regulations and can be considered “changes without regulator effect” because it does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section B – Percent of Recycled Plastic Postconsumer Material (RPPCM) Use

- **Section B1, Item 13c:** Item “13c” was added in order to give manufacturers a credit of 1.2 pounds of RPPCM for each pound of RPPCM purchased from California sources, as per statute (PRC Section 42291.5, Amended by Stats. 2001, Ch. 406, Sec. 1. Effective January 1, 2002).

Statute requires that the Department provide a 1.2 pounds credit towards compliance and the change is made so that the regulation is consistent with this statutorily required credit. The Department has no discretion or option not to include this statutorily required credit. Therefore, this change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is “making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”

The proposed addition of the credit does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision because the changes have been restricted to those that would make the existing regulations consistent with the relevant statutory provisions.

- **Section B1, Item 15:** The parenthesis reference at the end of the sentence has been changed from “(Line 13b + Line 14a)” to “(Line 13c + Line 14a)” to reflect the addition of the credit provided by item “13c.”

This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation..." These changes do not remove any of the existing questions or options, nor add any new requirements or questions. Therefore, they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

- **Section B2, Item 20c:** Item “20c” was added in order to give manufacturers a credit of 1.2 pounds of RPPCM for each pound of RPPCM purchased from California sources, as per statute (PRC Section 42291.5, Amended by Stats. 2001, Ch. 406, Sec. 1. Effective January 1, 2002).

Statute requires that the Department provide a 1.2 pounds credit towards compliance and the change is made so that the regulation is consistent with this statutorily required credit. The Department has no discretion or option not to include this statutorily required credit. Therefore, this change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is “making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”

The proposed addition of the credit does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision because the changes have been restricted to those that would make the existing regulations consistent with the relevant statutory provisions.

- **Section B2, Item 22:** The parenthesis reference at the end of the sentence has been changed from “(Line 20b + Line 21a)” to “(Line 20c + Line 21a)” to reflect the addition of the credit provided by item “20c.”

This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation..." These changes do not remove any of the existing questions or options, nor add any new requirements or questions. Therefore, they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section C – Other Minimum Content Mandates

The original items “(26a).” and “(26c).” have been re-written as “(26a)” and “(26c)” by removing the “.” to reduce redundancy and improve reading accessibility. These changes can be considered a "change without regulatory effect" because they meet the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation...". Further, the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section D – Manufacturer Production Locations

Under this section, item “35d” has been written twice; first under “(35d) State” and second under “(35d) Tons of regulated bags shipped.” The first occurrence has been changed to the correct order sequence of “(33d) State.” This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(1), in that it is “renumbering, reordering, or relocating a regulatory provision.” Further, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section F – Recycled Plastic Postconsumer Material Supplier Information

An opening parenthesis has been added to item “51a)” as it was missing the parenthesis sign before the number. In addition, under items “56b and 56c,” the acronym for “RPPCM” was missing a second “P” and both items have been edited to reflect the correct spelling of RPPCM. These changes can be considered a "change without regulatory effect" because they meet the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation...". Further, the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

CIWMB #57 Section H – Certification Instructions

Updated contact information, mailing address, program mailing “Attn” name, phone number, and fax number. Added an email address option.

The updates to the contact information are to notify stakeholders of the Department’s mailing address, phone number, and fax number. These changes are for informational purposes only and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision. The addition of the program email is an additional option or means for stakeholders to submit certifications if they choose so and is not an obligation or requirement. Providing the program email address can be considered a “change without regulatory affect” since submission by email is optional and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

These changes can also be considered a "change without regulatory effect" because in part, they also meet the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation..." and Section 100(a)(1), in that it is “renumbering, reordering, or relocating a regulatory provision.”

CIWMB #58 (11/01) - Trash Bag Wholesaler Certification Form

Throughout the Form:

The “California Integrated Waste Management Board” has been replaced with “Department of Resources Recycling & Recovery” to reflect the new Department name within the California Environmental Protection Agency since 2010 as enacted by PRC Sections 40400 and 40401.

This update will inform stakeholders of the new Department name consistent with California law. This change can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is “making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.” Further, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

The form has been reformatted to comply with ADA requirements per Assembly Bill 434, Chapter 780, PRC Section 11546.7. These changes can be considered “change without regulatory effect” as they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision and are meant to comply with ADA requirements.

Header:

The revision date of CIWMB #58 (11/01) has been changed to CIWMB #58 (06/22) to reflect the anticipated approval date for the amended version of the certification form. This is an administrative change that does not materially alter any requirement, right,

responsibility, condition, prescription or other regulatory element of any CCR provision and is meant to record the amended version of the approved certification form.

Instructions:

Removed a fax number that is no longer in use and the phrase “return by mail.” Detailed instructions for submittal of forms including a valid fax number and mailing address are included in another part of the form. Updated contact information, mailing address, program mailing “Attn” name, phone number, and fax number. Provided an email address option.

The updates to the contact information are to notify stakeholders of the new Department mailing address, phone number, and fax number. These changes are for informational purposes only and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision. The addition of the program email is an additional option or means for stakeholders to submit certifications if they choose so and is not an obligation or requirement. Providing the program email address can be considered a “change without regulatory affect” since submission by email is optional and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

These changes can also be considered a "change without regulatory effect" because in part, they also meet the requirements of Section 100(a)(4), in that it is "revising structure, syntax, cross-reference, grammar, or punctuation..." and Section 100(a)(1), in that it is “renumbering, reordering, or relocating a regulatory provision.”

CIWMB #58 Section A – Wholesaler Information:

Removed “Adhesive, Heat-Affixed Strap bags” as an option for item number “11.” This exemption was repealed from the statue by Senate Bill (SB) 698 (Rainey), Stats. 1998, c.44. The exemption has not existed in the in the law since 1998 and a corresponding change in the forms can be considered a "change without regulatory effect" because it meets the requirements of Section 100(a)(2), in that it is “deleting a regulatory provision for which all statutory or constitutional authority has been repealed.” The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 17979 – Requirements for Manufacturers of Regulated Trash Bags

Section 17979(a)(1)(A)(2)

Addition of a reference to a credit of 1.2 pounds of RPPCM for each pound of RPPCM purchased from California sources as per statute (PRC Section 42291.5, Amended by Stats. 2001, Ch. 406, Sec. 1. Effective January 1, 2002).

Statute requires that the Department provide a 1.2 pounds credit towards compliance and the change is made so that the regulation is consistent with this statutorily required credit. The Department has no discretion or option not to include this statutorily required credit. Therefore, this change can be considered a "change without regulatory effect"

because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is “making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”

The proposed addition of the credit does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision because the changes have been restricted to those that would make the existing regulations consistent with the relevant statutory provisions. Staff do not know of any reason why this change was not implemented in the regulations previously when the statute was amended in 2001 to provide this credit.

Section 17979 – Note: Authority Cited, Reference Section

PRC Section 42291.5 has been added to the reference section of the Regulation text. PRC Section 42291.5 is the superseding statute section that provides the authority for the credit of 1.2 pounds of RPPCM for each pound of RPPCM purchased from California sources.

This change can be considered a “change without regulatory effect” because it meets the requirements of Section 100(a)(5) in that it is “changing an “authority” or “reference” citation for a regulation.” Furthermore, this change can be considered a “change without regulatory effect” because it meets the requirements of Section 100(a)(6)(A) and (B), in that it is “making a regulatory provision consistent with a changed California statute if both of the following conditions are met: (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.” The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Sincerely,



Ty Moore
Sr. Attorney
Department of Resources Recycling & Recovery