

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

**2nd 45-day Public Comment Period and Public Hearing.**

Sorted by Comment Number

[Note: Comment numbers starting with:

“L2” denote comments contained in letters or other written communications received during the Second 45-day Comment Period.

“W4” denote comments from the workshop of October 5, 2011.

Example: Comment L2-03-02 is the second comment submitted by commenter L-03, and comment W4-01-01 is the first comment submitted by commenter W4.

Comment Number	Commenter	Summary of Comment	CalRecycle Response	Revisions Needed	2 <sup>nd</sup> 45-Day Section/Area
L2-01-01	Susan R. Nauman, Hedwin Corporation	The Hedwin Corporation has a patent for the Cubitainer insert which is a light weight, flexible plastic packaging that is shipped contained in a corrugated over pack. It is deemed flexible "inner packaging" by the US Dept of Transportation. In 1999, the CIWMB issued a letter of interpretation that concluded the Cubitainer is not rigid packaging, but the revised wording and reference to ASTM D6988.8 in the RPPC definition (17943 (aa)(3)(B)) would include our packaging.	See L-02-01A.	No change.	17943 (aa)(3)(B)
L2-01-02	Susan R. Nauman, Hedwin Corporation	We would like to see the RPPC definition revised to reference a more commonly used method of measuring molded containers rather than the ASTM D6988.8 procedure for flexible film currently cited. Container manufacturers do not use this method to measure thickness of molded containers as it is not appropriate. Container manufacturers typically scan containers for minimum thickness as opposed to film extruders who can scan for an average over the entire sample (using the referenced ASTM method). Creating a minimum at 0.10 inches would equalize the playing field for container and film manufacturers. For example, modify 17943(aa)(3)(B) to read: "It is not flexible plastic packaging with a minimum thickness of less than 0.10 inches."	See L-02-01A.  CalRecycle is only using ASTM D6988.8 guidelines to provide clarity regarding an exclusion within the definition which applies only to plastic packaging <b>composed entirely of plastic film</b> . There are several different types of RPPCs and some of them may be considered "flexible" when not holding a product, even if they are not made of "plastic film." Using the ASTM guidelines provides staff and industry a measurement tool, only to exclude from the definition of RPPC, that packaging which is entirely composed of plastic film.  The American Society for Testing and Materials (ASTM) is an independent peer-review establishment that provides agreed-upon industry standards.  ASTM D6988 defines film plastic as having thickness $\geq 0.010$ in., not $\geq 0.10$ inches. Based on staff experience, it would not be appropriate to measure the rigidity of a RPPC based only on the thinnest single point, rather than evaluate the entire package. Additionally, aside from "film plastic" (ASTM D6988.8) which is so consistently thin that it would be remarkable if it had any rigidity, due to the variety of plastic polymers/resins, available additives, and other factors, a specific thickness of a product's packaging would not necessarily exclude it from the "relatively inflexible" definition of an RPPC.  All of the factors outlined in the definition need to be considered.	No change.	17943 (aa)(3)(B)
L2-01-03	Susan R. Nauman, Hedwin Corporation	Unless the language is changed or Hedwin can maintain our original exemption, a packaging that provides significant environmental advantages will be included in the definition of rigid packaging. In the market we often compete with film plastic bag packaging and to place us in the rigid category would be a competitive disadvantage.	See L-02-01B.	No change.	17943 (aa)(3)(B)
L2-02-01	Anne Peters, Gracestone, Inc.	Do molded plastic packages containing items (not liquid or powder) and packaged within a larger cardboard box fit the program definition of RPPC?	Plastic containers which meet the definition of an RPPC may include those with additional cardboard or other packaging surrounding the RPPC. Section 17943(aa)(4)(B) says containers for products sold by weight or item count are measured for their equivalent volume. Such a container may meet the definition of an RPPC if it meets the equivalent volume and other factors specified in Section 17943(aa).		17943 (aa)
L2-03-01	Mark Kohorst, Nat'l Electrical Mfrs Assn.	The proposed revision to the definition of an RPPC will include previously excluded containers (e.g., blister packages and clamshells used for innumerable small electro-industry products and devices to protect against theft and breakage and enable consumers to view the products). This will impose enormous cost and design change burdens on an industry which does not manufacture on a state-by-state basis, and restrict manufacturers' ability to respond to differing markets and customer needs.	See L-05-01 and See S-09-01.	No change.	17943 (aa)

L2-03-02	Mark Kohorst, Nat'l Electrical Mfrs Assn.	The compliance options raise additional concerns. Many manufacturers have already worked to devise more easily recycled packages. The cost for other companies to use 25% PCM, however, is prohibitive as the products are for national (not just California) distribution, and the postconsumer resin market does not yet provide quality streams of materials at a reasonable price.	See L-05-03. Manufacturers are not required to comply with the RPPC regulations through use of the 25% post-consumer material option. They may comply with another of the compliance options included in adopted revised regulations sections 17944 and 17944.1. For example, if manufacturers have "worked to devise more easily recycled packages", they may elect to comply under PRC 42310(b) as described under Section 17944(a)(2).  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17944
L2-03-03	Mark Kohorst, Nat'l Electrical Mfrs Assn.	We urge CalRecycle to initiate a study of the impact of these regulations [particularly the revised RPPC definition] 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 manufacturers and their suppliers to adjust.	See L-05-03. Public Resources Code (PRC) 42310, (which became effective January, 1992) specifies the 25 percent PCM. Additionally, the PRC does not provide the Department the authority to implement a phased approach.  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (aa)
L2-03-04	Mark Kohorst, Nat'l Electrical Mfrs Assn.	While many blister packs and clamshells can be recycled in California's blue bin system, the "45% recycling rate" option has little, if any practical value to this industry because it's too high a rate for packaging that has no dedicated infrastructure beyond the blue bins. Data from other programs (e.g., glass bottles) suggest the likelihood of achieving a 45% rate is minimal where no disposal ban exists. We urge CalRecycle to reconsider using resources to monitor and enforce an unachievable recycling rate.	See S-09-01. Manufacturers are not required to comply with the RPPC regulations through use of the 45 percent recycling rate option. They may comply with another of the compliance options included in PRC 42310 and 42310.3 and further explained in adopted revised regulations sections 17944 and 17944.1. Companies may also use the product averaging (Section 17944 (b)), if applicable.	No change.	17944
L2-03-05	Mark Kohorst, Nat'l Electrical Mfrs Assn.	The reusable and refillable package options are inapplicable for electrical and electronic products, which are used immediately once the package is opened and often have long lives.	Per PRC 42310, "Reuse" and "Refill" are just two of the five options for compliance, and companies may also use the product averaging (Section 17944 (b)) or the alternative compliance method (PRC 42310.3 and Section 17944.1), if applicable.	No change.	17944
L2-03-06	Mark Kohorst, Nat'l Electrical Mfrs Assn.	The source reduction option has limited appeal for the electro-product industry as many manufacturers have already taken steps to streamline their packaging. Additionally, the elimination of the resin switching allowance makes it more difficult for manufacturers to comply by source reduction.	See L-05-08. Manufacturers are not required to comply with the RPPC regulations through use of the source reduction option. They may comply with another 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
L2-03-07	Mark Kohorst, Nat'l Electrical Mfrs Assn.	We remind CalRecycle of Strategic Directive 2 which states that a core value is that waste diversion efforts also achieve substantial greenhouse gas emission reductions in support of the California Global Warming Solutions Act of 2006. So we would urge retaining credit for resin switching.	See L-07-01, L-05-11 and L-05-14.	No change.	17943 (af)
L2-03-08	Mark Kohorst, Nat'l Electrical Mfrs Assn.	We urge CalRecycle to consider the impact of the expanded scope of the definition of an RPPC and the impacts the change will have 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)
L2-04-01	Randy Pollack, on behalf of Plastic Shipping Container Institute	The change to the definition of RPPC will capture containers not entirely made of plastic, reportedly to create a more level playing field, but the previously more limited definition was established due to the ambiguity of the law and the potential implementation problems due to broad interpretations.	See L-05-01 and L-05-02.	No change.	17943 (aa)
L2-04-02	Randy Pollack, on behalf of Plastic Shipping Container Institute	The change to the definition of RPPC also will add 357 million containers (including heat sealed) to the program and goes against the legislative intent of having a program that's manageable to implement.	See L-05-01.	No change.	17943 (aa)

L2-04-03	Randy Pollack, on behalf of Plastic Shipping Container Institute	Incorporating 25% injection grade postconsumer recycled material has been shown by tests to result in weaker, more brittle containers that are unable to comply with the necessary requirements for shipping containers such as plastic pails. Material consistency is critical, and all suppliers' tests have shown that introducing non-homogenous material to the process adversely impacts performance.	L-05-03 and W2-01-07. Per PRC 42310, use of "postconsumer material" (PCM) is just one of five options for compliance, and companies may also use the product averaging (Section 17944 (b)) or the alternative compliance method (PRC 42310.3 and Section 17944.1), if applicable. The Department neither encourages nor prohibits mixing resins.  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17944
L2-04-04	Randy Pollack, on behalf of Plastic Shipping Container Institute	Additionally, incorporating 25% blow molding PCR is not possible with today's equipment used in the pail industry. Even if new equipment were purchased (a significant cost), consistent sealing of lids with containers would be impossible because of the different viscosity and molecular weight distribution of PC from blow molded bottles versus pail resin (different resin structures within same resin type).	See W2-01-07.	No change.	17944
L2-04-05	Randy Pollack, on behalf of Plastic Shipping Container Institute	Pail manufacturers have also found there is not enough recycled HDPE or PP of the quality and consistency needed to meet the California 25% requirement (for the PCM option). This will reduce the availability of items in pails to California consumers.	See L-05-03. Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17944
L2-04-06	Randy Pollack, on behalf of Plastic Shipping Container Institute	The economic analysis states that the cost to California consumers of adding the additional containers identified as RPPCs will amount to more than \$2 million per year but this neglects other costs to businesses and consumers (e.g., the costs of obtaining PCR, obtaining new machinery to comply with the law, and of lawsuits when manufacturers void current contracts to manufacture compliant containers, production costs - since they affect all containers).	See L-05-04, L-05-05 and L-05-06.	No change.	Economic Analysis
L2-04-07	Randy Pollack, on behalf of Plastic Shipping Container Institute	The Department should provide adequate time to implement the revisions in recognition that to change a container takes up to 5 years--to develop the specifications, obtain the necessary machinery, test the integrity and safety of the container, and prepare it for sale.	See L-05-07 and L-07-08.	No change.	General
L2-04-08	Randy Pollack, on behalf of Plastic Shipping Container Institute	The proposed regulations eliminate the credit for resin switching by eliminating language that "material type does not mean individual plastic resins." This goes against a policy objective of the Department of less use of resources, and makes it virtually impossible for plastic container manufacturers to comply with this law.	See L-05-08 and L-05-11. All five of the options available under PRC 42310 result in reduced reuse of virgin plastic resins.	No change.	17943 (i)
L2-04-09	Randy Pollack, on behalf of Plastic Shipping Container Institute	Eliminating credit for resin switching violates the legislative intent of California's Global Warming Solutions Act of 2006 as it forces pail manufacturers, for example, to use more pounds of plastic per pail. (Each pound in HDPE reduction equates to 1.48 pounds of CO <sub>2</sub> reduction.	See L-05-11 and L-05-14. If a product manufacturer cannot use a source reduced container without resin switching, they could still comply with one of the other four compliance options; all five of the options available under PRC 42310 result in reduced reuse of virgin plastic resins and reduced CO <sub>2</sub> generation.	No change.	17943 (af)
L2-05-01	Tim Shestek, American Chemistry Council, etc.	The definition of Postconsumer Material should be revised to retain "post-industrial scrap" as PCM and thus encourage the maximum use and reuse of any plastic material that may be commonly disposed and not commonly reused. This would be consistent with Federal Trade Commission "green marketing guidelines."	See L-01-01 and W2-09-04.	No change.	17943 (q)
L2-05-02	Tim Shestek, American Chemistry Council, etc.	The proposed change to the definition of "Reusable RPPC" to exclude containers "used to permanently store the original product sold 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, CDs, paper clips).	See L-07-02.	No change.	17943 (z)
L2-05-03	Tim Shestek, American Chemistry Council, etc.	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)
L2-05-04	Tim Shestek, American Chemistry Council, etc.	The proposed changes to the RPPC definition would make many new containers (e.g., clamshells) 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.	See L-05-01.	No change.	17943 (aa)

L2-05-05	Tim Shestek, American Chemistry Council, etc.	The proposed changes to the RPPC definition also strike language requiring regulated containers to be capable of multiple re-closure. This means containers such as clamshells now are subject to the program and raised the questions of workload and PCM supply.	See L-05-01.	No change.	17943 (aa)
L2-05-06	Tim Shestek, American Chemistry Council, etc.	The Department should determine whether the supply of PCM is adequate before adding any new containers to the program.	See L-05-03. Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (aa)
L2-05-07	Tim Shestek, American Chemistry Council, etc.	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 and functionality needed, and penalize efforts to be more resource efficient (generate less greenhouse gases in production/transportation/use).  Provided Region 7 – Solid Waste (U.S. EPA, Region 7, June 2011)	See L -05-08 andL-05-11. The Department must implement California law, not Federal guidance documents.	No change.	17943 (af)
L2-05-08	Tim Shestek, American Chemistry Council, etc.	Eliminating the credit for resin switching is not needed to support recycling efforts. The studies we've attached [Moore's, Plastic News] report that most Californians have access to all bottle non rigid plastic recycling and the market demand for recycled material exceeds supply.  Provided Plastic Recycling Collection: California Reach Study (Moore Recycling Associates, July 2011) and California Non-Bottle Rigid Plastics Recovery in 2010: Communities and MRFs (Moore Recycling Associates, 2010).  Recyclers see hope in third material, Plastics News, May 24, 2011 issue that was discussed in the letter was not attached.	See L-05-08. Based on the Department's re-evaluation of statute regarding the definition of material type and sourced reduced container (described above), the Department found that statutory requirements that pre-date the RPPC Act of 1991 were not considered in the development of Integrated Waste Management Board's 1994 RPPC regulations and ultimately concluded that resin switching was not permissible based on the statutory requirements. Therefore, the Department could not consider alternatives which permitted resin switching and did not analyze the data for this purpose.	No change.	17943 (af)
L2-05-09	Tim Shestek, American Chemistry Council, etc.	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 tech 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)
L2-05-10	Tim Shestek, American Chemistry Council, etc.	The proposed prioritization process for selecting manufacturers for certification cycles leaves open the question of whether those product manufacturers who have reached a stipulated settlement with the Department could again be immediately placed first for another certification cycle. The regulations should specify that a company could be subject to a certification cycle no more often than once every five years.	See L-06-05.	No change.	17945.1 (b )
L2-05--11	Tim Shestek, American Chemistry Council, etc.	The regulations should provide a two year general waiver (before they're included in a certification) for products acquired in an acquisition. The available 30-day certification submittal extension for such causes is inadequate. Integration of products into a parent company due to acquisition can take from 18 - 24 months due to issues associated with identifying and integrating containers for purposes of corporate averaging, product re-design or processes.	See L-07-11A and See L-05-07. An acquired product line not previously sold or offered for sale in California may qualify for a waiver as a "newly introduced product" (see Section 17946(a)).	No change.	17946
L2-05-12	Tim Shestek, American Chemistry Council, etc.	We support the compliance option for concentrated products but asking for "a description of how the product was concentrated" is not necessary and should be deleted (or should be specifically covered by "trade secret" protections).	The proposed language was intended to provide product manufacturers an open-ended means of describing their product's concentration. Upon analysis of the comments received, the Department agrees that this information may often involve "trade secrets". Based on this the Department has deleted Subsections 17945.3(d)(3)(A) and (4)(B). The change in uses per unit should be adequate for determining compliance under this option.	Adopted revised 17945.3(d)(3)(A) and 17945.3(d)(4)(B) state "The number of product uses per unit before and after the product concentration."	17945.3 (d)(3) and (4)

L2-05-13	Tim Shestek, American Chemistry Council, etc.	The proposed regulations would require product manufacturers to submit an exemption request for their insecticides, fungicides and rodenticides or hazardous waste even though the statute (PRC 42340(c) and (d) already exempts these products. The additional paperwork burden is unnecessary and should be deleted.	See L-07-12.	Eliminated requirement for product manufacturers to submit an exemption request (adopted revised regulations 17946.5 (b)(2)).	17946.5 (b)(2)
L2-05-14	Tim Shestek, American Chemistry Council, etc.	The economic analysis was based on a statistically inadequate sampling of manufacturers cost data.	See W-02-07. Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, <u>updated Economic and Fiscal Impact Statement section, page (??)</u> .	No change.	Economic Analysis
L2-05-15	Tim Shestek, American Chemistry Council, etc.	It also has to be recognized that there will be costs associated with the 357 million containers added to the program as most manufacturers will have to change their containers to meet the PCM or source reduction options. The Department failed to analyze the significant costs of this, and should do so before the regulations are finalized.	See W-02-07. Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page (??).	No change.	Economic Analysis
L2-06-01	Brock Wanless, Illinois Tool Works (ITW)	We believe the changes to the RPPC regulations will result in increased opportunities for plastic recycling in California and assist the regulated community in complying with the law.	Comment noted. Commenter supports adopted revised regulations. .	No change.	General
L2-06-02	Brock Wanless, Illinois Tool Works (ITW)	We support the change to the definition of "postconsumer material" to include obsolete and unused packaging that would otherwise be disposed but not post-industrial scrap that would commonly be reused in the container manufacturing process.	Comment noted. Commenter supports definition of postconsumer material in adopted revised regulations Section 17943(q).	No change.	17943 (q)
L2-06-03	Brock Wanless, Illinois Tool Works (ITW)	We support the addition of specific timeframes for various submittals during the certification process.	Comment noted. Commenter supports timeframes in adopted revised regulations Sections 17945.1, 17946, and 17946.5.	No change.	17945.1, 17946, 17946.5
L2-06-04	Brock Wanless, Illinois Tool Works (ITW)	We support the clarifications to the record retention requirements for product and container manufacturers.	Comment noted. Commenter supports record retention requirements in adopted revised regulations Section 17948.1.	No change.	17948.1
L2-06-05	Brock Wanless, Illinois Tool Works (ITW)	We're not going to reiterate the comments previously submitted. However, all previous written and oral comments need to be considered.	Prior comments and responses are included in the Responses to Comments documents.	No change.	General
L2-06-06	Brock Wanless, Illinois Tool Works (ITW)	Please let us know whether oral or written comments on the second 45-day package will be accepted at the October 5 workshop, and whether there will then be a 15-day comment period. We'd like staff to define and circulate the regulatory calendar at the October 5 workshop.	All comments made at the October workshop were considered when preparing the next revisions to the proposed regulations for a 15-day public comment period. See also W3-02-04.	Provide the next steps at the next workshop and in the next notice.	General Process
L2-07-01	Gene Livingston, on behalf of American Cleaning Institute	We object to the language requiring a manufacturer doing source reduction by product concentration to state "how the product was concentrated." There's no clear need for this (wasn't noted in ISOR) and it's often trade secret so will result in a more burdensome process for the Department to track and store. We recommend eliminating this language.	See L2-05-12.	Eliminated requirement to state how product was concentrated (adopted revised regulations Section 17945.3 (d)(3) and (4)).	17945.3(d)(3) and (4)
L2-07-02	Gene Livingston, on behalf of American Cleaning Institute	The Department has appropriately concluded that the changes to the initially noticed regulations are substantial and require a second 45-day notice. However, the Department has failed to recognize that the substantial change also requires, at minimum, a supplemental Initial Statement of Reasons Government Code Section 11356.2(b).	The 2 <sup>nd</sup> 45-day comment period was voluntarily provided for the benefit of stakeholders, not because it was required. Therefore, a new Initial Statement of Reasons was not required. See Final Statement of Reasons.	No change.	General
L2-07-03	Gene Livingston, on behalf of American Cleaning Institute	Section 17946.5 simply repeats the statutory exemptions in PRC 42340 and is thus unnecessary.	There are slight differences between the exemptions in statute and those listed in adopted revised regulations Section 17946.5 made for clarity. See Final Statement of Reasons, Section 17946.5. Documentation Requirements	No change.	17946.5
L2-07-04	Gene Livingston, on behalf of American Cleaning Institute	Section 17946.5(b) adds a requirement for the manufacturer to request Department approval of exemptions for containers for toxic and hazardous products and containers used to ship hazardous materials. The Department has no authority to condition the exemptions already provided by statute. Section 17946.5 should be struck in its entirety.	See L-07-12.	Eliminated requirement for product manufacturers to submit an exemption request (adopted revised regulations 17946.5	17946.5 (b)

				(b)(2)).	
L2-08-01	Patty Enneking, Group Dir., Klockner Pentaplast Group	The definition of Postconsumer Material should be revised to retain "post-industrial scrap" as PCM and thus encourage the maximum use and reuse of any plastic material that may be commonly disposed. Waste is waste. This would also be consistent with Federal Trade Commission "green marketing guidelines." Suggested wording: "Manufacturing scrap that is commonly disposed and not commonly reused within an original manufacturing process may be considered postconsumer material if it is later used in a process other than the manufacturing and fabrication process that generated the scrap."	See L-01-01, and W2-09-04.	No change.	17943 (q)
L2-08-02	Patty Enneking, Group Dir., Klockner Pentaplast Group	Eliminating postindustrial material from the definition of postconsumer material is in contrast to the Departments 2009 Strategic Directive 3 that states "all material will be properly managed in accordance with the waste management hierarchy and in support of the Global Warming Solutions Act of 2006.	See L-07-01	No change.	
L2-08-03	Patty Enneking, Group Dir., Klockner Pentaplast Group	According to the Economic Impact Study, the amended regulations will affect some 118.3 million containers currently using postindustrial material to meet the PCM compliance option. In addition, the revised regulations add some 357 million containers to the program (per the RPPC definition). This is a problem because the amount of postconsumer recycled material is in short supply. Demand for PCR has outstripped supply for several years. Commenter cites article "Demand for Recycled Content Resin Still on the Rise" (Association of Postconsumer Plastic Recyclers, May 11, 2011.)	See L-01-01 and See L-05-03. Demand for Recycled Content Resin Still on the Rise (Association of Postconsumer Plastic Recyclers, May 11, 2011) is not a study but an article in which Steve Alexander had been quoted as saying, "It is common knowledge that the current demand and capacity to process and produce PCR far outpaces domestically sourced supply." But, Mr. Alexander only used the term "common knowledge" as opposed to actual numbers from studies.  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (q); 17943 (aa)
L2-08-04	Patty Enneking, Group Dir., Klockner Pentaplast Group	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 and functionality needed, and penalize efforts to be more resource efficient. It forces manufacturers to keep the status quo - resin types available circa 1995. This seems to contradict the Department's stated preference for source reduction by reducing packaging. The regulations should encourage companies to maximize resource efficiency (including by resin switching).  Provided Region 9 – Basic Facts about Solid Waste (U.S. EPA Region 9, June 2011).	See L-05-08 and L-07-01.	No change.	17943 (af)
L2-09-01	Mark Murray, Californians Against Waste (CAW)	We support updating the RPPC regulations to be consistent with existing statute and legislative intent, encourage more recycled PET and HDPE supply, and discourage the allowance of resin switching (e.g., from HDPE and PET to less recyclable PP resin).	Comment noted. Commenter supports adopted revised regulations.	No change.	General
L2-09-02	Mark Murray, Californians Against Waste (CAW)	California has steadily increased plastic processing and manufacturing capacity. Carbon LITE added 100-120 million pounds of PET processing in fall 2011, bringing total California PET processing to about 200-220 million pounds.  Provided California's Bottle Bill – Plastic Market Development Payment Program article (CAW Newsletter, 2011)	The Department used its Beverage Container data, but not the newsletter, in preparing the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	
L2-09-03	Mark Murray, Californians Against Waste (CAW)	We need to feed the continuing growth of domestic processing facilities (for recycled plastics) instead of shipping materials overseas, as this will provide thousands of jobs and result in reduced greenhouse gases.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
L2-10-01	Melissa Martin, Stateside Associates	My client was interested in finding out if there were specific reasons behind the changes to the RPPC definition. It appears it was to make more consistent implementation for packaging types.	See L-05-01. One of the purposes of the regulations revisions was to create a more level playing field for regulated RPPCs.	No change.	17943 (aa)

L2-11-01	Steve Alexander, Assn. of Postconsumer Plastic Recyclers	Our organization strongly supports the RPPC law as an effective means for diverting RPPCs from landfills, bring them back as recycled content, and meeting or exceeding California's diversion mandate. We support increased recycling for all plastic resin types.	Comment noted. Commenter supports RPPC compliance through increased plastic recycling.	No change.	General
L2-11-02	Steve Alexander, Assn. of Postconsumer Plastic Recyclers	Our organization wholeheartedly supports the revision to eliminate credit for source reduction by resin switching. Allowing compliance by resin switching has several negative consequences such as: effectively giving a container lifetime compliance credit for this with no regard for the container's recyclability and no use of recycled content (which was the intent of the law); RPPC law is clear that it is not source reduction if it adversely affects the container's recyclability or opportunity to use PCM; eliminating the need for any recycled content and thus undercutting the demand for recycled material; reduce the incentive to expand the current recycling infrastructure after California has spent lots in grants and loans to develop such infrastructure.	See L-10A-04. Commenter supports eliminating resin switching as a source reduction compliance option (adopted revised regulations Section 17943(af)).	No change.	17943 (af)
L2-12-01	David Nalley, Steam Way Intl	Don't use landfills for the disposal of the plastic resources; sort the trash and recycle. The fuel plastic recycling can generate far outrun the labor of sorting especially if use free prisoner labor.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
L2-12-02	David Nalley, Steam Way Intl	Within California we have a bottle return of five cents. This generates a plastic that is then sold as a product back to the manufacturers. This is cheaper than landfills.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
L2-12-03	David Nalley, Steam Way Intl	Don't tax and penalize the perceived rich. I'll stop selling to California.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
L2-12-04	David Nalley, Steam Way Intl	Become a creative problem-solving state and don't accept complaints without a suggestion or solution.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
W4-01-01	Ted Marks, JVC	Are clamshells or other packages of two hard plastic halves that hold components but are used once and then discarded RPPCs?	See L-05-01.	No change.	17943 (aa)
W4-01-02	Ted Marks, JVC	Will the presentation materials (PowerPoint and handouts) provided at the October 5, 2011 workshop be available on your website?	Yes, all information related to the RPPC rulemaking, including PowerPoint presentations, handouts and transcripts have been posted on the Department's website.	No change.	General Process
W4-02-01	Tim Shestek, American Chemistry Council	In prior comments we recommended that CalRecycle use the Federal Trade Commission's (FTC) green marketing guidelines as a standard. Under these I could purchase another company's discarded plastic material (such as shop floor scrap destined for disposal) to reuse for making containers, and it would count toward the recycled content compliance option. We want to be sure the RPPC regulations are clear that this reuse of materials (whether post-consumer or post-industrial) that would otherwise be disposed of is allowed and is credited toward compliance.	See L-01-01 and W2-09-04.	No change.	17943 (q)
W4-02-02	Tim Shestek, American Chemistry Council	It's my understanding that under these FTC guidelines, you have to substantiate the environmental marketing claims to say your container contains recycled content material that was at some point destined for disposal. And maybe the substantiation could be done under the container certification requirements or from a product manufacturer standpoint. We think it should be part of the overall compliance options. If needed, I can provide the Department with the information on what these guidelines require for substantiation. (Received guidelines)	See L-01-01 and W2-09-04. The Department's analysis of the guidelines is included in W2-09-04.	No change.	17943 (q)
W4-02-03	Tim Shestek, American Chemistry Council	If a company purchased plastic waste material from another company that has floor scrap that they're not reusing for whatever reason and they're going to end up just disposing it, if there's a market for that material, we just think that ought to be included in the ability to demonstrate compliance under the Content Compliance Option.	See L-01-01 and W2-09-04.	No change.	17943 (q)
W4-02-04	Tim Shestek, American Chemistry Council	We're looking for substantiation from CalRecycle as to why the change to no longer give compliance credit for resin switching is being proposed, what the objective is and why it's necessary. We don't feel it's appropriate to make this change as this option has been counted since the law was enacted.	See L-05-08.	No change.	17943 (af)
W4-02-05	Tim Shestek, American Chemistry Council	Will you be responding or drafting responses to comments provided at this workshop? Do you have any sense of when these will be posted or made available?	A complete summary of the responses to comments will be included in the final rulemaking package submitted to the Office of Administrative Law. Once the rulemaking package is complete, the responses will also be posted on the RPPC rulemaking website.	No change.	General Process

W4-02-06	Tim Shestek, American Chemistry Council	Once the Department amends the proposed language for the RPPC regulations and releases them for the 15-day comment period, will you only be asking for comments on the latest changes or is the entire package open for comment?	The Department only has to take comments on the proposed changes in the 15-day comment period version.	No change.	General Process
W4-02-07	Tim Shestek, American Chemistry Council	Do you have a sense of when the 15-day comment period will specifically start?	The 15-day comment period version of the regulations will be published later in October, 2011.	No change.	General Process
W4-03-01	Pansy Leo, Plastic Shipping Container Institute (PSCI)	There is insufficient supply (of post consumer resins) to meet demand, especially when considering the particular grades required to make pails (and that the metal handle exemption will go away). Molded HDPE pails require HDPE non-bottle injection grade PCR to get a melt index of 6-8; they can't incorporate bottle-grade HDPE without adversely affecting safety and performance. This is a serious concern. And only black pails (a small complement of the overall pail demand) can use PCR; clear pails can't use PCR and light pails can only use light colored PCR which is in short supply. [She gave various statistics on PCR supply from the Moore Recycling Study of 2009 completed for the Canadian Plastic Industry Association.] Other users are competing for these materials too so there need to be more compliance options.  Moore and Associates 2009 Canadian Plastic Study was not received.	See L-05-03, See L-05-08 and See S-04-02. The Department did not receive the referenced paper and could not analyze it.  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (aa)
W4-03-02	Pansy Leo	Most pails in North America are made out of HDPE and its well known in our industry that we can maximize source reduction by switching from HDPE to polypropylene (PP) while maintaining performance due to the physical and chemical properties of PP. We can't achieve 10% or more source reduction of HDPE containers with the same type of resin without incorporating brand new technology and significant time and capital investment.	The commenter makes general statements about source reduction through resin switching, so the Department is unable to review and analyze specific information to reach a conclusion. Manufacturers are not required to comply with the RPPC regulations through use of the source reduction option. They may comply with another of the compliance options included in adopted revised regulations sections 17944 and 17944.1.	No change.	17943 (af)
W4-03-03	Pansy Leo	I do work for Ropak but was also authorized to represent PSCI of which we are a member. While some container manufacturers may not have issues getting enough PCR supplies to make their containers, other big PSCI members are concerned about getting enough PCR. They have asked me to once again raise the concerns regarding the availability of PCR supplies.	See L-05-03.	No change.	17943 (aa)
W4-03-04	Pansy Leo	While some container manufacturers oppose switching from PE to PP as it requires a large capital investment, no one is forcing them to do it. We see credit for resin switching giving pail manufacturers' flexibility in choosing the proper material to meet fit, form, function and safety requirements of customers. By eliminating compliance credit for resin switching the Department is limiting the flexibility of pail manufacturers to choose the appropriate type of material that technically meets customer specs.	See L-05-02.	No change.	17943 (af)
W4-03-05	Pansy Leo	I would like to respond to the statement made by Mr. Norton. The fact that Ropak does not have any manufacturing plant in California is irrelevant to our compliance with the RPPC law. As we have discussed throughout the rulemaking, containers subject to this RPPC law can be made anywhere but are regulated if sold in California.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	17943 (aa)
W4-03-06	Pansy Leo	Regarding sufficient or insufficient quantities of PCR, the statements made by Mr. Norton provides examples of very general types of PCR. Pail manufacturers can only use non-bottle, rigid injection grade of consistent quality. Even an article by the APR [Assn of Plastics Recyclers] of July 5, 2011 noted demand for clean PCR is there and processing capacity is there but reliable quantities of high-grade bales are missing.  Article by APR [Assn of Plastics Recyclers] of July 5, 2011 was not provided nor is available via APR.	See L-05-03, See L-05-08 and See S-04-02. The Department did not receive the referenced paper and could not analyze it.  Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).		17943 (aa)

W4-04-01	Howie Norton, Norton Packaging	I take issue with the comments made by Ms. Leo. Ropak is owned and controlled out of England and does not have a manufacturing plants in California (nearest is in British Columbia). Norton Packaging is also a member of PSCI and has plants in California and Indiana. Norton Packaging has never seen a shortage of recyclable plastic material. I've been in these RPPC meetings since 1989. I have presented information early on regarding my company's safety and performance success and concerns regarding pails, and we are very quality concerned.	Further discussion is provided in the Final Statement of Reason' (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page (??).	No change.	17943 (aa)
W4-04-02	Howie Norton	On behalf of my company and the consensus of the total population of PSCI members is that some like ourselves oppose a switch from PE to PP as it would require completely new tooling and one mold alone is worth \$300,000.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	17943 (af)
W4-04-03	Howie Norton	A little rebuttal to the comments made by Pansy Leo. She's referring to high density polyethylene (HDPE) versus low density polyethylene (LDPE). In the 50 tons of material we process, quite a bit was intentionally bought as LDPE. We're having no problem mixing it, in minimal amounts, with the recycled HDPE to help to achieve our compliance with the RPPC requirements.	Comment noted. Comment not specifically directed at the agency's proposed action or procedures.	No change.	General
W4-05-01	Sue Vang, Californians Against Waste (CAW)	CAW also disagrees with the statement that there's insufficient recycled plastic supply to meet the demand. Looking at U.S. EPA numbers and extrapolating for California, we found that California generated 327,471 tons of PET, 327,471 tons of HDPE, and 144, 472 tons of PPL. If all the plastic containers sold in California had to meet the 25% PCM requirement, manufacturers would need about 200,000 tons of plastic and there are currently more than 275,000 tons of plastics collected. We believe that there is more than enough material to meet the demands.	No change - comment not specifically directed at the agency's proposed action or procedures. 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)
W4-05-02	Sue Vang, Californians Against Waste (CAW)	We want to reiterate our support of the changes that have been made in the regulations. There is growth in domestic recycling facilities, especially here in California, and we need to continue to feed this growth.	Comment noted. Commenter supports adopted revised regulations.	No change.	General